COMMITTEE REPORT NO. 06-9 (2) TABLED ON NOV 05 1990

11th Assembly

Report of the Special Committee on Constitutional Reform

Hon. Michael Ballantyne, M.L.A.
Chairman

Northwest Territories Legislative Assembly

92-00959/

November 5, 1990

THE HONOURABLE RICHARD NERYSOO, M.L.A.,
SPEAKER.

Your Special Committee on Constitutional Reform has the honour of presenting its Report and commends it to the House for consideration.

Hon. Michael Ballantyne, M.L.A.,
Chairman.

Committee Members

Hon. Michael Ballantyne, M.L.A.,
Yellowknife North,
Chairman

Hon. Stephen Kakfwi, M.L.A.
Sahtu

Mr. John Ningark, M.L.A.
Natilikmiot

Mr. Red Pedersen, M.L.A.
Kitikmeot West

Mr. Henry Zoe, M.L.A.
Rae-Lac La Martre

Alternate Members

Mr. Sam Gargan, M.L.A.
Deh Cho

Mr. Bruce McLaughlin, M.L.A.
Pine Point

Ex Officio

Hon. Dennis Patterson, M.L.A.
Iqaluit

Hon. Richard Nerysoo, M.L.A.,
Mackenzie Delta

Staff Members

Mr. Doug Schauerte
Committee Clerk

Mr. Geoffrey Bickert
Legal Counsel

Mr. Bernard Funston
Legal Counsel

Report of the

Special Committee on Constitutional Reform

Introduction

Your Special Committee on Constitutional Reform is pleased to submit its report on its activities in relation to proposed amendments to the Constitution of Canada contained in an agreement of First Minister's dated June 3, 1987 ("the Meech Lake Accord") and resolutions tabled in the Legislature of New Brunswick on March 21, 1990 ("the New Brunswick Companion Resolutions").

Terms of Reference

The terms of reference for the Special Committee on Constitutional Reform were established on March 22, 1990 as follows:

1. Review the Meech Lake Accord signed on June 3, 1987 and matters related thereto;

2. Review any proposal, suggestion or matters related thereto being proposed or which may be proposed by the Government of Canada, provincial governments, or Yukon Government to approve or amend the Meech Lake Accord;

3. Undertake any further legal analysis necessary of the Meech Lake Accord or of any proposed changes or additions that effect constitutional reform in Canada and the Northwest Territories;

4. Undertake such consultations, discussions or meetings that are necessary with authorized federal and provincial bodies and appropriate territorial bodies that have the responsibility to consider the Meech Lake Accord and matters related thereto;

5. Prepare a report with recommendations to the Legislative Assembly on a strategy for the Legislative Assembly to deal with the Meech Lake Accord and any amendments or subsequent constitutional amendments;

6. The report shall be presented to the Legislative Assembly at a time to be decided by the Committee but not later than the Fall Session of 1990;

7. A special session of the Legislative Assembly may be called if necessary in accordance with Rule 3(2) of the Rules of the Legislative Assembly;

8. The Special Committee has the authority, if the Legislature is not in Session, to release its report by depositing a copy of it with the Clerk of the House.

A copy of the motion by which the committee was established is in Appendix A to this report.

Activities of the Committee

On March 27, 1990, soon after the Committee was established by the Legislative Assembly of the Northwest Territories, the House of Commons also established an all-party special committee to study the proposal for a companion resolution to the Meech Lake accord which had emerged from the Legislature of New Brunswick. This special committee (the "Charest Committee") conducted hearings across Canada and invited presentations from the Canadian public as well as from elected representatives. The Charest Committee held hearings in Yellowknife on April 17 and 18, 1990. A joint presentation to the Charest Committee was made on April 18th by your Committee through its chairman, the Honourable Michael Ballantyne and two of its members, the Honourable Richard Nerysoo and Mr. John Ningark, M.L.A. A copy of the joint presentation is in Appendix B.

During the course of the presentation the Charest Committee invited further written submissions of a technical nature and your committee subsequently provided such submissions on May 2, 1990. A copy of the technical brief is in Appendix C.

The Charest Committee Report, which addressed several of the concerns raised by your committee in its presentations, was tabled in Parliament on May 17, 1990. However in the course of events which were to follow the Charest Report did not become the basis for discussions between First Ministers. On June 2nd, First Ministers commenced private meetings which continued until the evening of June 9th. A public meeting of First Ministers finally commenced later on June 9th. Between June 2nd and 9th the members of your committee were in Ottawa or available by teleconference for consultations on the positions to be taken by the Government Leader in discussions with other First Ministers.

The "Final Communique" which was delivered by First Ministers at the public session on June 9-10, 1990 is in Appendix D.

Although this Final Communique was intended to lead to a ratification of the Meech Lake Accord by Manitoba, New Brunswick and Newfoundland, only New Brunswick subsequently ratified the Accord. On June 23rd, 1990, the Meech Lake Accord expired without any amendments having been made to the Constitution of Canada. A table of the activities of your committee and other important dates is in Appendix E.

Recommendations

Your Committee is required to present a report to the Legislative Assembly on a strategy to deal with the Meech Lake Accord and any amendments or subsequent constitutional amendments. With the expiry of the Accord on June 23rd, national constitutional discussions were temporarily postponed. The federal government and several provinces are presently evaluating their objectives and their strategies for constitutional reform. In light of these circumstances the Committee has the following recommendations:

1. The Committee should continue to monitor developments in other jurisdictions relating to constitutional reform resulting from the expiry of the Meech Lake Accord, in particular any proposals, suggestions or matters which have been proposed or which may be proposed by the Government of Canada, provincial governments, or Yukon government and which may affect constitutional reform in Canada and the Northwest Territories.

2. The Committee should continue with its mandate under its terms of reference to undertake such consultations, discussions or meetings that are necessary with authorized federal and provincial bodies and appropriate territorial bodies that have the responsibility to consider matters arising from the failure of the Meech Lake Accord.

3. Prior to the dissolution of the 11th Assembly, the Committee shall prepare reports with recommendations to the Legislative Assembly on a strategy for the Legislative Assembly to deal with any proposals for reform of, or amendments to, the Constitution of Canada.

Northwest Territories Legislative Assembly/ᓄᓇᕗᑦᑎᐊᓕᒃ ᓴᓪᓴᐅᑎᕐᒪᑦ

APPENDIX A

Motion
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ESTABLISHMENT OF THE SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

WHEREAS the 1987 Constitutional Accord (Meech Lake Accord) has to be ratified by June 23, 1990;

AND WHEREAS this Legislative Assembly has grave concerns with the effect the Accord will have on constitutional matters in the Northwest Territories;

AND WHEREAS this Legislative Assembly has to ensure that the desires and aspirations of the Northwest Territories are further considered prior to the final ratification of the Accord;

AND WHEREAS Premier McKenna of New Brunswick has taken a constructive step to break the impasse over the Meech Lake Accord;

AND WHEREAS it is now possible for discussions to focus on how the Meech Lake Accord can, in a spirit of compromise and statesmanship, be saved through amendments or a parallel accord;

AND WHEREAS substantive concerns about Meech Lake remain to be addressed;

NOW, THEREFORE, I move, seconded, by the Honourable Member for Yellowknife Centre, that this Assembly establish a Special Committee to be named the Special Committee on Constitutional Reform;

AND FURTHER that the Terms of Reference for this Special Committee on Constitutional Reform be established as follows:

1. Review the Meech Lake Accord signed on June 3, 1987 and matters related thereto;

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Date of Notice/ᖃᓄᐃᓕᐅᕈᑎᒃ ᑕᕐᔪᐊ: March 22, 1990
Date of Introduction/ᑲᖏᖅᓯᐅᕈᑎᒃ ᑕᕐᔪᐊ: March 22, 1990
Disposition/ᖃᓄᐃᓕᓴᐅᓪᓚᕆᒃ:
Carried/ᐊᔪᕐᓇᖅᑐᓂᖅ:

Moved by/ᐱᒋᐊᖅᑎᑦᑕᓂᖅ: Mr. D. Patterson
Seconded by/ᑐᓴᕐᓇᖅᑐᓂᖅ: Mr. B. Lewis
Ruled out of Order/ᓇᓴᓕᕆᔨᒃᑲᓂᖅ:

2. Review any proposal, suggestion or matters related thereto being proposed or which maybe proposed by the Government of Canada, provincial governments, or Yukon Government to approve or amend the Meech Lake Accord;

3. Undertake any further legal analysis necessary of the Meech Lake Accord or of any proposed changes or additions that effect constitutional reform in Canada and the Northwest Territories;

4. Undertake such consultations, discussions or meetings that are necessary with authorized federal and provincial bodies and appropriate territorial bodies that have the responsibility to consider the Meech Lake Accord and matters related thereto;

5. Prepare a report with recommendations to the Legislative Assembly on a strategy for the Legislative Assembly to deal with the Meech Lake Accord and any amendments or subsequent constitutional amendments;

6. The report shall be presented to the Legislative Assembly at a time to be decided by the Committee but not later than the Fall Session of 1990;

7. A special Session of the Legislative Assembly may be called if necessary in accordance with Rule 3(2) of the Rules of the Legislative Assembly;

8. The Special Committee has the authority, if the Legislature is not in Session, to release its report by depositing a copy of it with the Clerk of the House;

AND FURTHERMORE the Special Committee on Constitutional Reform shall:

a) conduct its business in a manner approved by the Committee;

b) have the power to call for such persons, papers and records and to examine witnesses as, in its opinion, are necessary to the conduct of business;

c) be provided the necessary funds to carry out its responsibilities from the appropriations of the Legislative Assembly;

d) as a whole, or individual members, undertake such travel as is required to carry out the assigned responsibilities of the Committee;

e) be empowered to retain the services of such professional staff and advisors as deemed advisable by the Committee;

f) be provided with the necessary administrative support by the Legislative Assembly office;

g) have the power to sit during Sessions, adjournments and recesses of the House.

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APPENDIX B

A PRESENTATION BY THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

TO THE

HOUSE OF COMMONS SPECIAL COMMITTEE TO STUDY A PROPOSED COMPANION RESOLUTION TO THE MEECH LAKE ACCORD

Yellowknife, N.W.T.
April 18, 1990

SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

COMMITTEE MEMBERSHIP

Hon. Michael Ballantyne, M.L.A.
Chairman

Hon. Stephen Kakfwi, M.L.A.

Mr. John Ningark, M.L.A.

Mr. Red Pedersen, M.L.A.

Mr. Henry Zoe, M.L.A.

ALTERNATES

Mr. Sam Gargan, M.L.A.

Mr. Bruce McLaughlin, M.L.A.

EX OFFICIO

Hon. Dennis Patterson, M.L.A.

Hon. Richard Nerysoo, M.L.A.

A PRESENTATION BY THE LEGISLATIVE ASSEMBLY
OF THE NORTHWEST TERRITORIES
SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

TO THE

HOUSE OF COMMONS SPECIAL COMMITTEE
TO STUDY A PROPOSED COMPANION RESOLUTION
TO THE MEECH LAKE ACCORD

Yellowknife
April 18, 1990

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE.

I AM THE CHAIRMAN OF THE SPECIAL COMMITTEE OF THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES ON CONSTITUTIONAL REFORM. THE SPEAKER OF THIS LEGISLATIVE ASSEMBLY, THE HONOURABLE RICHARD NERYSOO, AND MR. JOHN NINGARK WILL ALSO BE SAYING A FEW WORDS TO YOU TODAY. OUR COMMITTEE WAS STRUCK TO ADDRESS ISSUES SURROUNDING THE MEECH LAKE ACCORD AND COMPANION RESOLUTIONS. WE ARE PLEASED TO HAVE THIS OPPORTUNITY TO SHARE WITH YOU A NORTHERN PERSPECTIVE ON THESE MATTERS OF PROFOUND NATIONAL IMPORTANCE.

ON BEHALF OF THE GOVERNMENT AND LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES I WOULD LIKE TO WELCOME YOU TO YELLOWKNIFE AND TO THESE LEGISLATIVE CHAMBERS. IT IS WITHIN THESE FOUR WALLS THAT THE ELECTED REPRESENTATIVES OF THE PEOPLE OF THE NORTHWEST TERRITORIES ARE TRYING TO SHAPE A TOLERANT SOCIETY THAT WILL MEET THE DISTINCT ASPIRATIONS OF CANADIANS IN THE NORTHERN THIRD OF CANADA. WE ARE PLEASED TO SAY THAT THROUGH A RECENT AMENDMENT TO OUR OFFICIAL LANGUAGES ACT WE HAVE RECOGNIZED THE SIX MAJOR ABORIGINAL LANGUAGES AS OFFICIAL LANGUAGES OF THE NORTHWEST TERRITORIES ALONG WITH ENGLISH AND FRENCH.

THE NORTHWEST TERRITORIES IS A VIBRANT AND ENTHUSIASTIC PART OF CANADA. WE BELIEVE WE CAN MAKE A SIGNIFICANT CONTRIBUTION TO THE PROCESS OF CONSTITUTIONAL REFORM AS THE ONLY

JURISDICTION IN WHICH ABORIGINAL PEOPLES CONSTITUTE A MAJORITY OF THE POPULATION.

IT IS COMMENDABLE THAT YOU HAVE TAKEN THE TIME TO COME TO THE NORTHWEST TERRITORIES TO HEAR THE VIEWS OF CANADIANS WHO, LIKE QUEBECERS, ARE EAGER TO BECOME FULL PARTNERS IN THE CONSTITUTIONAL COUNCILS OF THIS NATION.

AS WE HAVE CONSISTENTLY STATED, THIS GOVERNMENT AND ASSEMBLY DO NOT IGNORE THE IMPORTANCE OF RESOLVING QUEBEC'S CONSTITUTIONAL ASPIRATIONS AND REQUIREMENTS. THE GOVERNMENT OF QUEBEC HAS REFUSED TO PARTICIPATE FULLY IN THE CONSTITUTIONAL COUNCILS OF CANADA SINCE 1981 BECAUSE THEY'VE FELT ALIENATED AND BETRAYED. THE MEECH LAKE ACCORD WAS DESIGNED TO ADDRESS QUEBEC'S DEMANDS FOR CONSTITUTIONAL REFORM. WE HAVE NEVER SOUGHT TO MINIMIZE OR DENY THE NEED TO HAVE QUEBEC AS A WILLING MEMBER OF THE CANADIAN FEDERATION. WE ARE, HOWEVER, SURPRISED THAT THE NORTHWEST TERRITORIES AND YUKON MIGHT BECOME CASUALTIES IN THIS NATIONAL RECONCILIATION WITH QUEBEC.

WE THEREFORE EXTEND OUR SINCERE APPRECIATION TO PREMIER MCKENNA FOR THE COURAGEOUS AND DIRECT MANNER IN WHICH HE HAS ATTEMPTED TO ADDRESS THE CONCERNS OF MANY CANADIANS ACROSS THE COUNTRY, AND IN PARTICULAR ABORIGINAL PEOPLES AND THE PEOPLES

OF THE TWO TERRITORIES. WHEN WE TOOK OUR CONCERNS TO THE NEW BRUNSWICK SELECT COMMITTEE IN JANUARY 1989, THEY OBVIOUSLY LISTENED VERY CAREFULLY. PREMIER MCKENNA'S PROPOSAL STANDS IN STARK CONTRAST TO THOSE WHO HAVE TREATED THE NEGATIVE IMPACTS ON THE NORTH AS AN ACCEPTABLE LEVEL OF DAMAGE IN THIS ROUND.

WE HAVE OFTEN SAID OVER THE LAST THREE YEARS THAT CONSTITUTIONAL CASUALTIES CANNOT BE TOLERATED IN ANY ROUND. THE CANADIAN PEOPLE HAVE GROWN WEARY OF MEECH LAKE RHETORIC, BUT WE CANNOT OVERLOOK THE FACT THAT THIS EXERCISE IS ABOUT AMENDING OUR CONSTITUTION. EXPEDIENCY SHOULD NOT BECOME A SUBSTITUTE FOR PRINCIPLE. PREMIER MCKENNA HAS GIVEN US HOPE THAT OUR EFFORTS TO IMPROVE UPON THE MEECH LAKE ACCORD OVER THE PAST THREE YEARS HAVE NOT BEEN IN VAIN.

THE TABLING OF PREMIER MCKENNA'S PROPOSAL IN THE HOUSE OF COMMONS HAS ADDED A NEW DIMENSION TO THE DEBATE ON THE MEECH LAKE ACCORD. WE HOPE THE LEADERSHIP WHICH PREMIER MCKENNA HAS SHOWN WILL INSPIRE OTHER FIRST MINISTERS TO RECONSIDER THEIR RIGID POSITIONS.

MR. CHAIRMAN, I UNDERSTAND THAT YOUR COMMITTEE WANTS TO FOCUS ON THE NEW BRUNSWICK COMPANION RESOLUTION IN THESE PUBLIC HEARINGS. I WOULD FIRST LIKE TO REVIEW FOR YOUR COMMITTEE OUR SUBSTANTIVE CONCERNS WITH THE MEECH LAKE ACCORD IN ORDER TO

EXPLAIN WHY THE LEGISLATIVE ASSEMBLY AND GOVERNMENT OF THE NORTHWEST TERRITORIES HAVE CONSISTENTLY TAKEN THE POSITION THAT THE MEECH LAKE ACCORD AS IT PRESENTLY STANDS IS NOT ACCEPTABLE.

THE MAJOR AREAS WHERE WE FEEL THE MEECH LAKE ACCORD HAS DIRECT NEGATIVE IMPACTS ON INDIVIDUALS AND GOVERNMENTS IN THE TWO TERRITORIES ARE AS FOLLOWS:

1. THE REQUIREMENT FOR UNANIMITY IN THE MEECH LAKE ACCORD AMENDING FORMULA WILL MAKE IT VIRTUALLY IMPOSSIBLE FOR THE TERRITORIES TO REACH PROVINCEHOOD.

2. THE PROVISIONS OF THE MEECH LAKE AMENDING FORMULA WILL ALLOW PARLIAMENT AND THE PROVINCIAL LEGISLATURES TO EXTEND PROVINCIAL BOUNDARIES INTO THE NORTHWEST TERRITORIES WITHOUT ANY CONSULTATION WITH THE PEOPLE AND THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES. WE ACKNOWLEDGE THAT THE UNANIMITY REQUIREMENT IN MEECH LAKE WILL MAKE IT MORE DIFFICULT IN PRACTICE FOR PROVINCES TO ANNEX PARTS OF THE TERRITORIES. HOWEVER, IN PRINCIPLE WE CANNOT ACCEPT ANY FORM OF ANNEXATION WITHOUT SOME CONSTITUTIONAL GUARANTEE THAT THE PEOPLE AND ELECTED REPRESENTATIVES OF THE TERRITORIES WILL BE INVOLVED IN THE PROCESS.

3. THE PROVISIONS OF THE MEECH LAKE ACCORD RELATING TO FIRST MINISTERS' CONFERENCES ON CONSTITUTIONAL MATTERS AND THE ECONOMY WILL EXCLUDE PARTICIPATION OF THE GOVERNMENT LEADERS OF THE TWO NORTHERN TERRITORIES.

4. THE MEECH LAKE ACCORD LACKS ANY PROVISIONS FOR A CONSTITUTIONAL PROCESS THAT WILL LEAD TO A RESOLUTION OF THE OUTSTANDING CONCERNS OF ABORIGINAL PEOPLES, IN PARTICULAR DEDICATED CONFERENCES TO IDENTIFY AND DEFINE ABORIGINAL RIGHTS WHICH ARE PROTECTED BY THE CONSTITUTION.

5. UNDER THE FEDERAL SUPREME COURT ACT, QUALIFIED INDIVIDUALS IN THE TWO TERRITORIES ARE NOW ELIGIBLE FOR APPOINTMENT TO THE COURT ON THE SAME TERMS AS QUALIFIED INDIVIDUALS IN THE PROVINCES. THE MEECH LAKE ACCORD DISCRIMINATES AGAINST INDIVIDUALS IN THE TERRITORIES AND PROVIDES NO PRACTICAL MEANS FOR THEIR APPOINTMENT TO THE SUPREME COURT. IN ADDITION THE ACCORD EXCLUDES THE TERRITORIAL GOVERNMENTS FROM PROCEDURES FOR APPOINTING QUALIFIED PERSONS TO THE COURT.

6. THE PROVISIONS RELATING TO THE APPOINTMENT OF SENATORS DO NOT ALLOW TERRITORIAL GOVERNMENTS TO NOMINATE CANDIDATES FOR APPOINTMENT. THE NORTHWEST TERRITORIES IS CURRENTLY

GUARANTEED REPRESENTATION IN THE SENATE BY THE CONSTITUTION ACT, 1975 AND, THEREFORE, THE NORTHWEST TERRITORIES SHOULD BE INVOLVED IN ANY CONFERENCES OR MEETINGS ON SENATE REFORM.

OTHER PORTIONS OF THE MEECH LAKE ACCORD, SUCH AS THE DISTINCT SOCIETY CLAUSE, ALSO HAVE IMPORTANT, ALTHOUGH MORE INDIRECT CONSEQUENCES FOR THE NORTHWEST TERRITORIES. THE DISTINCT SOCIETY CLAUSE WILL BE IMPORTANT IN ANY FUTURE CONSTITUTIONAL TALKS RELATING TO ABORIGINAL RIGHTS AND ABORIGINAL SELF-GOVERNMENT.

THOSE ARE SOME OF OUR MAJOR CONCERNS WITH THE SUBSTANCE OF THE MEECH LAKE ACCORD. I WILL TURN NOW TO MR. MCKENNA'S PROPOSAL, WHICH IN SUBSTANCE GOES A LONG WAY TOWARDS ADDRESSING OUR CONCERNS. SPECIFICALLY, MR. MCKENNA'S PROPOSED AMENDMENTS HAVE ADDED WORDING IN RELATION TO THE CREATION OF PROVINCES BY PARLIAMENT; A TERRITORIAL ROLE IN SUPREME COURT AND SENATE APPOINTMENTS; AND TERRITORIAL PARTICIPATION IN CONSTITUTIONAL CONFERENCES ON ABORIGINAL RIGHTS. FURTHERMORE, THESE ADDITIONS, IN OUR VIEW, WILL NOT ERODE QUEBEC'S POSITION UNDER THE MEECH LAKE ACCORD.

I DON'T NEED TO SAY MUCH MORE ABOUT PREMIER MCKENNA'S PROVISIONS ON SENATE AND SUPREME COURT APPOINTMENTS. IF HIS

PROVISIONS WERE ADOPTED OUR CONCERNS ON THESE TWO ITEMS WOULD BE MET. IN A MOMENT THE HONOURABLE RICHARD NERYSOO AND MR. JOHN NINGARK WILL ADDRESS PREMIER MCKENNA'S PROPOSALS RELATING TO ABORIGINAL PEOPLES. I WANT TO NOW MAKE A FEW COMMENTS SPECIFICALLY ABOUT THE ISSUE OF PROVINCEHOOD FOR THE TERRITORIES.

ONE OF OUR GREATEST CONCERNS WITH THE CONSTITUTIONAL PROCESS IN THE PAST TEN YEARS HAS BEEN THE DESIRE OF PROVINCES TO HAVE AN EXPANDING ROLE IN RELATION TO ESTABLISHING NEW PROVINCES IN THE TERRITORIES. PREMIER MCKENNA'S PROPOSAL HAS SQUARELY ADDRESSED OUR CONCERNS ON THE PROVINCEHOOD ISSUE. IF HIS PROPOSED AMENDMENT IS ADOPTED ON THIS ISSUE OUR CONCERNS WOULD BE MET.

YOU HAVE ALREADY HEARD FROM SOME EXPERTS WHO CLAIM THAT PREMIER MCKENNA'S PROPOSAL FOR THE CREATION OF NEW PROVINCES WOULD ALTER THE VETO WHICH QUEBEC AND OTHER PROVINCES HAVE SOUGHT. WE WOULD DRAW YOUR COMMITTEE'S ATTENTION TO THE FACT THAT THE MCKENNA PROPOSAL CAN BE INTERPRETED AS CLARIFYING THE POWER OF PARLIAMENT TO ESTABLISH NEW PROVINCES IN THE TERRITORIES UNDER THE CONSTITUTION ACT, 1871. THE CONSTITUTION ACT, 1871 HAS NEVER BEEN AMENDED OR REPEALED AND PREMIER MCKENNA'S WORDING WOULD SIMPLY CLARIFY THAT THERE WAS NO INTENTION TO BLOCK TERRITORIAL ASPIRATIONS IN THE MEECH

LAKE ACCORD, OR IN THE CONSTITUTION ACT, 1982 WHEN THE SO-CALLED 7/50 FORMULA WAS FIRST ADOPTED. PREMIER MCKENNA'S PROPOSAL WOULD REMOVE ANY DOUBTS ABOUT THE INTERPRETATION OF THESE PROVISIONS AND WOULD REINFORCE THE ASSURANCES WE'VE BEEN GIVEN BY SOME FIRST MINISTERS THAT THEY DO NOT INTEND TO BLOCK OR GET INVOLVED IN THE POLITICAL AND CONSTITUTIONAL DEVELOPMENT OF THE TERRITORIES.

WE ARE AWARE THAT SOME WITNESSES BEFORE YOU MIGHT HAVE LEFT THE IMPRESSION THAT CREATING NEW PROVINCES WILL AFFECT PROVINCIAL POWERS AND THAT THIS IS A RATIONALE FOR PROVINCIAL INVOLVEMENT. CAREFUL ANALYSIS DOES NOT SUPPORT THIS. THE POWERS OF PROVINCES UNDER THE CONSTITUTION RELATE TO MATTERS WITHIN THE PROVINCE. THE AMENDING FORMULA IN THE CONSTITUTION ACT, 1982 ALREADY CONTAINS OPTING OUT PROVISIONS WHERE ANY PROVINCIAL POWERS, RIGHTS OR PRIVILEGES MIGHT BE AFFECTED BY A CONSTITUTIONAL AMENDMENT. NO ONE HAS EXPLAINED HOW THE ESTABLISHMENT OF NEW PROVINCES IN THE TERRITORIES WILL HAVE ANY IMPACT ON THESE POWERS, RIGHTS OR PRIVILEGES WITHIN THE PROVINCES. TO ILLUSTRATE THE POINT ANOTHER WAY, THE INCREASE OR DECREASE OF POPULATION IN SOME PROVINCES WOULD HAVE AN IMPACT ON THE 7/50 FORMULA AND YET "POPULATION GROWTH OR DECLINE" IS NOT A MATTER SUBJECT TO THE AMENDING FORMULA.

ANOTHER RATIONALIZATION WE SOMETIMES HEAR IS THAT THE ADDITION OF NEW PROVINCES WILL AFFECT THE SUBTLE REGIONAL CHEMISTRY OF THE AMENDING FORMULA. IN OTHER WORDS, WITH NEW PROVINCES IN THE NORTH IT WOULD BE POSSIBLE TO LEAVE THE ATLANTIC PROVINCES OUT OF AN AMENDMENT. BECAUSE OF THE POPULATION ELEMENT IN THE 7/50 FORMULA, THIS WOULD NOT BE TRUE FOR THE FORESEEABLE FUTURE.

THE SUBTLE EFFECTS WHICH THE ADDITION OF NEW PROVINCES WILL HAVE ON THE UNANIMITY FORMULA, ON THE OTHER HAND, ARE POLITICAL RATHER THAN LEGAL. THE UNANIMITY FORMULA IS PREMISED ON EQUALITY OF THE PROVINCES. EVERY PROVINCE HAS A VETO. SUPPOSE A NEW NORTHERN PROVINCE AT SOME POINT IN THE FUTURE PROPOSED AN UNPOPULAR CONSTITUTIONAL AMENDMENT. ANY EXISTING PROVINCE WHICH WAS OPPOSED COULD VETO IT. CREATING NEW PROVINCES DOES NOT ALTER THE PROVINCIAL VETO POWER.

SOME OF THESE EXPERTS SAY IT WILL BE HARDER TO GET UNANIMOUS CONSENT WITH TWELVE OR THIRTEEN PROVINCES. HOW DO THEY KNOW THE NORTHWEST TERRITORIES WILL BE MORE LIKELY TO BE UNCOOPERATIVE ON AMENDMENTS REQUIRING UNANIMITY? WE DO NOT SEE OTHER PARTS OF THE AMENDING FORMULA STRUCTURED TO EXCLUDE REGIONS OR PROVINCES BASED ON HOW THEY MIGHT VOTE ON AN ISSUE. THERE IS NO RATIONALE FOR GIVING EXISTING PROVINCES THE POWER OF LIFE OR DEATH OVER TERRITORIAL POLITICAL AND CONSTITUTIONAL

DEVELOPMENT BASED ON SUCH CONJECTURES, PARTICULARLY WHEN THE UNANIMITY FORMULA IS BASED ON THE PRINCIPLE OF EQUALITY.

OTHER EXPERTS HAVE CONTENDED THAT EQUALIZATION AND ECONOMIC ISSUES FORM A RATIONALE FOR PROVINCIAL INVOLVEMENT IN CREATING NEW TERRITORIES. THIS IS, IN OUR VIEW, A RED HERRING. NO OTHER PROVINCES HAVE HAD TO RUN THE GAUNTLET TO SECURE ADMISSION. NOR HAS ANY OTHER PROVINCE HAD TO FACE A "MEANS" TEST ON ADMISSION.

WE HAVE NOTED THAT YOUR COMMITTEE WISHES TO CONDUCT FURTHER RESEARCH INTO THE ISSUE OF PROVINCIAL STATUS FOR THE NORTH. WE WOULD BE PLEASED TO EXTEND ASSISTANCE TO THE COMMITTEE IN THIS REGARD BY WAY OF FURTHER WRITTEN SUBMISSIONS OR WHATEVER WOULD BE APPROPRIATE.

WE SUPPORT PREMIER MCKENNA'S PROPOSAL ON THE PROVINCEHOOD ISSUE. IN ANSWER TO SOME OF THE EXPERTS YOU HAVE ALREADY HEARD LAST WEEK IN OTTAWA, PREMIER MCKENNA'S PROPOSAL IS NOT A "RADICAL" SOLUTION. IT IS AN AFFIRMATION OF A FORMULA THAT IS STILL PART OF THE CONSTITUTION OF CANADA, AND THAT HAS SERVED CANADA THROUGHOUT ITS HISTORY.

THEREFORE, I WANT TO AGAIN COMMEND PREMIER MCKENNA FOR HIS LEADERSHIP AND THE SPIRIT OF COMPROMISE HE HAS SOUGHT TO

REKINDLE. I WANT TO COME BACK TO DISCUSS ISSUES OF PROCESS BUT FIRST I'LL TURN THE PODIUM OVER TO THE HONOURABLE RICHARD NERYSOO WHO HAS SOME COMMENTS ON ABORIGINAL RIGHTS AND THE DISTINCT SOCIETY CLAUSE.

[THE HONOURABLE RICHARD NERYSOO] MR. CHAIRMAN, LADIES AND GENTLEMEN OF THE COMMITTEE, I WELCOME YOU AGAIN TO THE CHAMBERS OF THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES.

WE APPRECIATE THE DIFFICULT TASK WHICH YOU HAVE BEEN CALLED UPON TO CARRY OUT IN THESE PUBLIC HEARINGS. THE STRIKING OF YOUR COMMITTEE IS AN ACKNOWLEDGEMENT BY THE PARLIAMENT OF CANADA THAT CANADIANS MUST BE LISTENED TO ON THE ISSUE OF CONSTITUTIONAL REFORM.

AS A CANADIAN CITIZEN AND ABORIGINAL PERSON I AM ACUTELY AWARE THAT THE PROCESS OF CONSTITUTIONAL REFORM MUST BE ACCESSIBLE TO ALL CANADIANS. IN THE PAST THREE YEARS WE HAVE SEEN THE MEECH LAKE ACCORD SEPARATED OFF FROM OTHER PRESSING CONSTITUTIONAL MATTERS. LET'S NOT FORGET THAT MEECH LAKE IS ABOUT CONSTITUTIONAL AMENDMENTS. WE SEE PREMIER MCKENNA'S COMPANION RESOLUTION AS AN ATTEMPT TO BRING BALANCE BACK TO THE PROCESS OF REFORM.

YOUR MANDATE AS I UNDERSTAND IT IS TO SEEK SOLUTIONS TO THE CURRENT IMPASSE RATHER THAN TO ENSURE THAT THE MEECH LAKE ACCORD IS PASSED UNAMENDED. YOUR STATESMANSHIP AND POWERS OF COMPROMISE WILL BE GREATLY CHALLENGED. YOU WILL HEAR FROM MANY CANADIANS THAT THE MEECH LAKE ACCORD AS IT PRESENTLY STANDS SHOULD NOT BE ADOPTED WITHOUT CONSTITUTIONAL GUARANTEES THAT OTHER ISSUES WILL BE ADDRESSED.

I WANT TO SAY A FEW WORDS ABOUT MY EXPERIENCE IN THESE PROCESSES DURING THE PAST FEW YEARS. AS THE FORMER GOVERNMENT LEADER I ATTENDED FIRST MINISTERS CONFERENCES ON ABORIGINAL CONSTITUTIONAL MATTERS. FOR FIVE YEARS, FROM 1982 TO 1987, ABORIGINAL LEADERS STRUGGLED TO GAIN SOME RECOGNITION FOR THEIR DISTINCT ROLE AS THE FIRST PEOPLES OF CANADA. SOME OF OUR OFFICIALS ATTENDED OVER EIGHTY MEETINGS AND CONFERENCES ON THIS MATTER. FROM THE BEGINNING TO THE END WHEN WE TALKED ABOUT ABORIGINAL SELF-GOVERNMENT, THE FIRST MINISTERS INSISTED THAT THE ABORIGINAL LEADERS MUST "DEFINE, DEFINE, DEFINE" BEFORE THERE COULD BE ANY CONSTITUTIONAL AMENDMENT. THE PROVINCES AND THE FEDERAL GOVERNMENT REFUSED TO ACCEPT ANYTHING IN THE CONSTITUTION WHICH WOULD ALLOW THE COURTS TO INTERPRET THE MEANING OF ABORIGINAL SELF-GOVERNMENT.

WE WERE SHOCKED WHEN BARELY ONE MONTH AFTER THE FAILURE OF TALKS ON ABORIGINAL SELF-GOVERNMENT, THE FIRST MINISTERS

ACCOMMODATED QUEBEC'S FIVE DEMANDS IN A SINGLE MEETING. I RECOGNIZE THAT WORK HAD GONE ON BEHIND THE SCENES, BUT TO ME IT WAS REMARKABLE THAT THIS COULD HAPPEN. THE CENTRE PIECE OF THE MEECH LAKE ACCORD IS THE DISTINCT SOCIETY CLAUSE WHICH ALLOWS THE COURTS TO INTERPRET UNDEFINED TERMS SUCH AS "DISTINCT SOCIETY" AND "DISTINCT IDENTITY". THE PROVINCE OF QUEBEC, WHICH HAS THREATENED SEPARATION FROM CANADA FOR MANY YEARS, WAS ACCOMMODATED, WHILE THE ABORIGINAL PEOPLES WHO WANT TO BECOME FULL MEMBERS OF THE CANADIAN FAMILY WERE REJECTED. NO ONE SAID TO QUEBEC "DEFINE, DEFINE, DEFINE". I JUST WANTED TO SHARE THAT WITH YOU. AS AN ABORIGINAL PERSON IT APPEARS TO ME THAT THE PRESENT CONSTITUTIONAL REFORM PROCESS HAS A DOUBLE STANDARD. TO ME THIS IS NOT FAIR, NOR IS IT SOMETHING TO BE CONDONED.

ABORIGINAL PEOPLES IN THE NORTHWEST TERRITORIES HAVE BEEN STRIVING TO BE FULL PARTNERS IN CANADA FOR A VERY LONG TIME. RECENTLY, THE DENE, METIS AND INUIT INITIALLED COMPREHENSIVE CLAIMS PACKAGES WHICH COVER MOST OF THE TERRITORIES. NOW THAT OUTSTANDING COMPREHENSIVE LAND CLAIMS IN THE NORTH ARE FINALLY BEING CONCLUDED, THE PEOPLE OF THE NORTHWEST TERRITORIES ARE IN A MUCH BETTER POSITION TO MOVE TOWARDS PROVINCIAL STATUS IN A WAY THAT RESPECTS THE PLACE OF THE DISTINCT ABORIGINAL CULTURES OF THE NORTH.

WE BELIEVE WE UNDERSTAND QUEBEC'S DEMANDS FOR RECOGNITION AS A DISTINCT SOCIETY. WE ACCEPT THE DISTINCTIVENESS OF QUEBEC, BUT WE SEE A SPECIAL RECOGNITION FOR QUEBEC IN THE MEECH LAKE ACCORD, AND NOTHING TO RECOGNIZE THE DISTINCT ABORIGINAL SOCIETIES IN CANADA. A TASK FORCE OF THE SENATE HAS RECOMMENDED RECOGNITION IN THE CONSTITUTION OF DISTINCT ABORIGINAL SOCIETIES AND WE AGREE WITH THIS RECOMMENDATION.

WE ALSO NOTICE THAT NO GOVERNMENT HAS EXPLICITLY BEEN ASSIGNED THE ROLE OF PRESERVING AND PROMOTING THE DISTINCT IDENTITY OF ABORIGINAL PEOPLES. AS I'VE ALREADY MENTIONED, AFTER FIVE LONG YEARS OF CONSTITUTIONAL DISCUSSIONS FROM 1982 TO 1987, SOME FIRST MINISTERS REJECTED THE IDEA THAT ABORIGINAL PEOPLES THEMSELVES SHOULD BE IN A POSITION TO PRESERVE AND PROMOTE THEIR DISTINCT IDENTITIES THROUGH ABORIGINAL SELF-GOVERNMENT.

WE BELIEVE THAT THE MEECH LAKE ACCORD MUST BE IMPROVED BY:

1. INCLUDING A PROVISION WHICH RECOGNIZES ABORIGINAL PEOPLES AS CONSTITUTING DISTINCT SOCIETIES WHICH ARE A FUNDAMENTAL CHARACTERISTIC OF CANADA; AND

2. BY INCLUDING PROVISIONS WHICH ALLOW ABORIGINAL PEOPLES TO BE INVOLVED IN CONSTITUTIONAL REFORM ON MATTERS WHICH DIRECTLY AFFECT THEM. IN PARTICULAR THERE MUST BE A

CONSTITUTIONAL PROCESS FOR IDENTIFYING AND DEFINING THE ABORIGINAL RIGHTS PROTECTED BY THE CONSTITUTION. AS PART OF THESE CONFERENCES, THERE SHOULD BE DISCUSSION OF THE ROLE OF ABORIGINAL SELF-GOVERNMENTS IN PRESERVING AND PROMOTING THE DISTINCT SOCIETIES OF ABORIGINAL PEOPLES.

WE APPLAUD PREMIER MCKENNA FOR RECOGNIZING THAT CONFERENCES ON ABORIGINAL RIGHTS MUST BE PUT BACK IN THE CONSTITUTION. HOWEVER, WE BELIEVE THAT UNLESS THERE ARE CONSTITUTIONAL CONFERENCES DEDICATED TO ABORIGINAL ISSUES ALONE, THE MATTER COULD GET LOST ON THE AGENDA.

MR. CHAIRMAN, IN CLOSING I WANT TO SIMPLY SAY THAT CANADIANS ARE RELYING ON YOUR COMMITTEE TO BRING A TONE OF FAIRNESS TO THE PROCESS OF CONSTITUTIONAL REFORM.

I WILL NOW TURN OVER THE PODIUM TO MR. JOHN NINGARK, THE MEMBER FOR NATILIKMIOT, WHO WILL ADD SOME COMMENTS ON THESE ISSUES.

[MR. JOHN NINGARK] THANK YOU. AS MR. NERYSOO INDICATED, WE'VE MADE A LOT OF PROGRESS IN THE NORTHWEST TERRITORIES IN THE LAST DECADE AND WE'RE NOW MUCH CLOSER TO SETTLING THE MAJOR LAND CLAIMS OF THE ABORIGINAL PEOPLES. IN MY PART OF THE TERRITORIES, THE INUIT HAVE RECENTLY INITIALLED AN

AGREEMENT-IN-PRINCIPLE WITH THE FEDERAL AND TERRITORIAL GOVERNMENTS ON OUTSTANDING CLAIMS OF THE INUIT. ONE OF THE BASES OF THE INUIT CLAIM WAS THE NEED FOR A PUBLIC FORM OF GOVERNMENT WHICH REFLECTS THE INUIT CULTURE IN THE AREA WE CALL NUNAVUT.

OUR CLAIMS IN THE TERRITORIES ARE NOW ALMOST SETTLED, BUT IN MANY PARTS OF CANADA THAT IS NOT THE CASE. THE ROLE OF THE ABORIGINAL PEOPLES IN CANADA HAS BEEN GENERALLY IGNORED IN THE CONSTITUTIONAL PROCESS APART FROM THE SPECIAL CONFERENCES FROM 1982 TO 1987. WE BELIEVE THERE ARE OUTSTANDING ISSUES FROM THAT PROCESS THAT MUST BE RESOLVED. PREMIER MCKENNA HAS OFFERED A POSSIBLE SOLUTION TO ALLOW FURTHER DISCUSSIONS. HOWEVER, AS MR. NERYSOO SAID, IF ABORIGINAL RIGHTS ARE ONLY ONE ITEM ON A LONG AGENDA WE CANNOT EXPECT TO SEE MUCH PROGRESS. WE BELIEVE THERE MUST BE SPECIAL CONSTITUTIONAL CONFERENCES TO IDENTIFY AND DEFINE ABORIGINAL RIGHTS.

ON THE MATTER OF TERRITORIAL PARTICIPATION IN THE PROCESSES OF CONSTITUTIONAL REFORM, MR. MCKENNA'S PROPOSAL DOES NOT PROVIDE THAT TERRITORIAL LEADERS WILL BE INVITED TO ALL CONFERENCES ON THE CONSTITUTION OR THE ECONOMY WHICH AFFECT THE TERRITORIES. AS HIS PROPOSAL NOW STANDS, IT SEEMS TO IMPLY THAT AN INVITATION WOULD ONLY BE EXTENDED FOR DISCUSSIONS ON ABORIGINAL ISSUES. IT IS OUR POSITION THAT PREMIER MCKENNA'S

PROPOSAL COULD BE IMPROVED ON THIS POINT. THE TERRITORIAL GOVERNMENTS CANNOT CONTINUE TO BE LEFT OUTSIDE THE MEETING ROOMS OF CONSTITUTION REFORM.

AT THIS POINT I WOULD ALSO LIKE TO ACKNOWLEDGE OUR SUPPORT FOR THE PRESENTATIONS WHICH HAVE ALREADY BEEN MADE TO YOU LAST WEEK BY THE NATIONAL ABORIGINAL ORGANIZATIONS.

THE RECOMMENDATIONS OF MR. ERASMUS, MR. MCCORMICK AND MR. AMAGOALIK FORM THE BASIS FOR IMPROVEMENTS TO MR. MCKENNA'S PROPOSAL. WE BELIEVE THAT ABORIGINAL PEOPLES MUST PARTICIPATE IN THE PROCESS OF CONSTITUTIONAL REFORM, PARTICULARLY WHERE THEY ARE DIRECTLY AFFECTED. THERE SHOULD BE A CONSTITUTIONAL GUARANTEE IN THIS ROUND THAT ABORIGINAL CONCERNS WILL BE ADDRESSED IN DEDICATED CONSTITUTIONAL CONFERENCES.

I WISH YOUR COMMITTEE STRENGTH AND WISDOM IN YOUR DELIBERATIONS. THIS IS A TIME FOR PRINCIPLED AND FAIR LEADERSHIP IN SHAPING THE CONSTITUTION FOR ALL CANADIANS. THANK YOU FOR COMING TO THE NORTHWEST TERRITORIES TO HEAR OUR CONCERNS.

MR. BALLANTYNE HAS SOME CONCLUDING REMARKS ON THE ISSUE OF PROCESS.

[THE HONOURABLE MICHAEL BALLANTYNE] I WOULD LIKE TO CONCLUDE WITH COMMENTS ABOUT THE PROCESS OF CONSTITUTION REFORM. MEECH LAKE HAS TAUGHT SOME IMPORTANT LESSONS WHICH SHOULD NOT BE IGNORED. WE DO NOT WANT TO DETRACT FROM THE SUBSTANCE OF THE MCKENNA PROPOSAL, BUT WE MUST STRESS THAT THE SUBSTANTIVE ISSUES ARE STILL OVERSHADOWED BY SERIOUS PROBLEMS OF PROCESS.

THE AMENDMENTS FLOWING FROM PREMIER MCKENNA'S "COMPANION RESOLUTION" MIGHT NOT BE PROCLAIMED UNTIL AFTER THE MEECH LAKE ACCORD HAS COME INTO FORCE. IT IS VERY CLEAR THAT THERE CAN BE NO CONSTITUTIONALLY RECOGNIZED GUARANTEE THAT THE NEW BRUNSWICK PROPOSALS WILL BE ADOPTED AFTER THE MEECH LAKE ACCORD IS RATIFIED. AS A RESULT, THIS COULD PROLONG A RESOLUTION OF THE SUBSTANTIVE CONCERNS OF MANY CANADIANS.

WE ARE RELUCTANT TO ACCEPT SIMPLE POLITICAL PROMISES THAT THE MCKENNA PROPOSAL WILL BE ADOPTED SOMETIME AFTER MEECH LAKE IS RATIFIED. THE TWO TERRITORIES HAVE BEEN THE VICTIM OF SUCH PROMISES BEFORE. IN 1983 A CONSTITUTIONAL ACCORD SIGNED BY ALL FIRST MINISTERS, EXCEPT QUEBEC, HAD PROMISED THAT THE TERRITORIES WOULD BE INVITED TO A CONSTITUTIONAL CONFERENCE TO DEAL WITH ABORIGINAL RIGHTS ISSUES AND THE 1982 AMENDING FORMULA WHICH GAVE PROVINCES A DIRECT ROLE IN THE CREATION OF NEW PROVINCES. THIS MATTER WAS NOT ADDRESSED AS PROMISED. AT MEECH LAKE THE FIRST MINISTERS COMPOUNDED THE PROBLEM BY

INCLUDING THE CREATION OF NEW PROVINCES IN THE LIST OF THINGS REQUIRING UNANIMOUS CONSENT.

FROM THE PERSPECTIVE OF THE NORTHWEST TERRITORIES THE NEW BRUNSWICK PROPOSAL WOULD HAVE TO BE RATIFIED AT THE SAME TIME AS THE MEECH LAKE ACCORD FOR IT TO HAVE ANY PRACTICAL SIGNIFICANCE.

THE FLAWS IN THE MEECH LAKE PROCESS HAVE BEEN APPARENT TO MANY CANADIANS AND POLITICIANS SINCE THE ORIGINAL ACCORD WAS CONCEIVED. IN OUR VIEW FUTURE CONSTITUTIONAL DISCUSSIONS SHOULD CONCENTRATE AT LEAST AS MUCH ON PROCESS AS THEY HAVE ON SUBSTANCE. THERE ARE VERY FEW ISSUES WHICH SHOULD LEAD TO CONSTITUTIONAL CHANGES. ANNUAL CONSTITUTIONAL CONFERENCES, IN OUR VIEW, WILL WEAKEN THE UNDERPINNINGS OF THE CANADIAN CONSTITUTION BY POTENTIALLY MAKING EVERY ISSUE A CONSTITUTIONAL ISSUE.

THE GOVERNMENT OF THE NORTHWEST TERRITORIES WAS EXCLUDED FROM THE CONSTITUTIONAL DISCUSSIONS IN 1981 AND AGAIN IN 1987 WHILE THE VITAL INTERESTS OF THE TERRITORIES WERE BEING DISCUSSED. AS MINISTER OF JUSTICE, I TOO WAS DIRECTLY INVOLVED IN THE CONSTITUTIONAL CONFERENCES ON ABORIGINAL MATTERS. WE NEVER FOR A MOMENT EXPECTED THAT TERRITORIAL ISSUES WOULD BE DEALT WITH IN OUR ABSENCE IN A PROCESS SUCH AS THE ONE WHICH LED TO

THE MEECH LAKE ACCORD. I CANNOT OVER EMPHASIZE HOW IMPORTANT IT IS IN ALL DISCUSSIONS ON CONSTITUTIONAL REFORM TO HAVE A FAIR PROCESS FOR HEARING, AND ACTING ON, THE CONCERNS OF ALL GOVERNMENTS AND ALL CITIZENS OF CANADA. THE PROCESS OF CONSTITUTIONAL REFORM HAS FAILED CANADIANS. UNLESS WE DO SOMETHING ABOUT PROCESS, OUR PROBLEMS WILL CONTINUE.

IN THE FUTURE THE PROCESS OF CONSTITUTIONAL REFORM SHOULD NOT MAKE SOME CANADIANS OR SOME PROVINCES STAND IN LINE TO BOB FOR CONSTITUTIONAL APPLES. THE CONSTITUTIONAL REFORM PROCESS CANNOT BE DRIVEN BY CLAIMS OF BETRAYAL AND ULTIMATUMS, FOLLOWED BY CONSTITUTIONAL PAY OFFS. THAT IS NO WAY TO BUILD A COUNTRY.

NO ONE WILL DENY THAT THE MEECH LAKE ACCORD IS ABOUT GOVERNMENT RIGHTS AND PERHAPS IN THAT FACT IS CONTAINED ITS GREATEST FLAW. FIRST MINISTERS ASSUMED, WRONGLY, THAT GOVERNMENTS ALONE HAD AN INTEREST IN THE DOCUMENT. FURTHERMORE, SOME CANADIANS WERE ALIENATED IN THE ENSUING DEBATE TO SUCH A DEGREE THAT THEY FELT THEY WERE DENIED ANY PARTICIPATION IN THE PROCESS. SOME OF THE PUBLIC HEARINGS ON THE ACCORD, RIGHTLY OR WRONGLY, HAVE BEEN PERCEIVED BY CANADIANS TO BE WHITE WASHES FOR A DEAL THAT WOULD NOT BE ALTERED UNDER ANY CIRCUMSTANCES.

THE MEECH LAKE ACCORD STANDS AS A TESTAMENT TO THE NEED FOR TERRITORIAL LEADERS TO BE DIRECTLY INVOLVED IN CONSTITUTIONAL TALKS WHENEVER TERRITORIAL INTERESTS ARE AFFECTED. THE LEGISLATIVE ASSEMBLY AND GOVERNMENT OF THE NORTHWEST TERRITORIES DO NOT BELIEVE A HEARING PROCESS SUCH AS THE ONE YOU ARE NOW CONDUCTING CAN BE AN EFFECTIVE SUBSTITUTE FOR DIRECT TERRITORIAL PARTICIPATION. OUR MESSAGE CAN ONLY BE EFFECTIVELY COMMUNICATED TO FIRST MINISTERS IF WE ARE AT THE TABLE.

PREMIER MCKENNA'S PROPOSAL HAS PLACED GREAT TRUST AND RELIANCE ON THE GOOD FAITH OF FIRST MINISTERS AT FUTURE CONSTITUTIONAL MEETINGS AND CONFERENCES. WE RECOMMEND, THEREFORE, THAT AN ADDITION BE MADE TO MR. MCKENNA'S PROPOSAL TO ALLOW TERRITORIAL PARTICIPATION IN ALL CONFERENCES AND MEETINGS ON THE ECONOMY AND THE CONSTITUTION. THE EXPLICIT INCLUSION OF THE TERRITORIES IN CONFERENCES ON ABORIGINAL MATTERS WILL LIKELY OPERATE TO EXCLUDE THE TERRITORIES FROM ALL OTHER MEETINGS AND CONFERENCES. IT IMPLIES THAT CONSTITUTIONAL MATTERS DO NOT AFFECT THE TERRITORIAL GOVERNMENTS UNLESS THEY INVOLVE ABORIGINAL RIGHTS. THAT IS OBVIOUSLY NOT THE CASE.

IF THE MEECH LAKE ACCORD IS NOT RATIFIED BY JUNE 23RD, WE RECOMMEND THAT SERIOUS THOUGHT BE GIVEN TO MATTERS OF PROCESS BEFORE FURTHER CONSTITUTIONAL NEGOTIATIONS ARE HELD. WE

FURTHER RECOMMEND THAT FIRST MINISTERS FOCUS ON THE AMENDING FORMULA AND PROCESSES FOR PUBLIC PARTICIPATION IN CONSTITUTIONAL REFORM SUCH AS REFERENDA OR PUBLIC HEARINGS. AMENDMENTS ON PROCESS SHOULD BE MADE FIRST TO ENSURE THAT WHAT FOLLOWS BY WAY OF SUBSTANCE IS ADEQUATELY PRESENTED TO THE CANADIAN PEOPLE FOR THEIR CONSIDERATION PRIOR TO THE ADOPTION OF ANY CONSTITUTIONAL AMENDMENT. A CONFERENCE TO REVIEW THE AMENDING FORMULA IS ALREADY PROVIDED FOR IN SECTION 49 OF THE CONSTITUTION ACT, 1982. IT IS OUR POSITION THAT THERE SHOULD BE TERRITORIAL PARTICIPATION IN ANY SUCH CONFERENCE.

FINALLY, I WANT TO SAY A FEW WORDS ABOUT IRRESPONSIBLE RHETORIC FROM MANY QUARTERS THAT HAS RECENTLY SURROUNDED THIS SERIOUS TASK OF NATION BUILDING. THIS DOES NOT REFLECT A LEVEL OF STATESMANSHIP WORTHY OF THIS EXERCISE. AS HAS BEEN SAID ELSEWHERE, "IF THE PRESENT LEADERS CAN'T SOLVE THESE PROBLEMS, CANADIANS WILL FIND A NEW BATCH WHO CAN."

MEECH LAKE HAS BECOME A NATIONAL CATHARSIS UNLEASHING THE TENSIONS OF OUR COUNTRY BUILT UP OVER THE LAST 123 YEARS. BUT CATHARSIS SHOULD BRING RENEWAL.

MR. CHAIRMAN, WE CANNOT SHY AWAY FROM THE FORMIDABLE CHALLENGES FACING US. IT IS PROFOUNDLY DISTURBING TO ME THAT ANY RESPONSIBLE PERSON COULD SERIOUSLY CONTEMPLATE THE

BREAKING APART OF OUR COUNTRY. DURING A DYNAMIC EPOCH IN WORLD HISTORY WHERE NATIONS AND PEOPLE AROUND THE GLOBE ARE GRAPPLING WITH FUNDAMENTAL QUESTIONS OF MONUMENTAL IMPORTANCE, CANADIANS SHOULD REALIZE THAT THEY ARE LIVING IN PERHAPS ONE OF THE WORLD'S MOST FAVOURED NATIONS.

SURELY WE CAN CRAFT A CONSTITUTION WHICH, TO QUOTE LORD SANKEY, IS "BASED UPON A CONSIDERATION OF THE RIGHTS OF OTHERS AND IS EXPRESSED IN A COMPROMISE WHICH WILL REMAIN A LASTING MONUMENT TO THE POLITICAL GENIUS OF CANADIAN STATESMEN."

THANK YOU. OUR COMMITTEE IS PREPARED TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

APPENDIX C

Legislative Assembly of the Northwest Territories

Special Committee on Constitutional Reform

TECHNICAL BRIEF

to

The House of Commons Special Committee
to Study a Proposed Companion Resolution to the Meech Lake Accord

May 2, 1990

LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

COMMITTEE MEMBERSHIP

Hon. Michael Ballantyne, M.L.A.
Chairman

Hon. Stephen Kakfwi, M.L.A.

Mr. John Ningark, M.L.A.

Mr. Red Pedersen, M.L.A.

Mr. Henry Zoe, M.L.A.

ALTERNATES

Mr. Sam Gargan, M.L.A.

Mr. Bruce McLaughlin, M.L.A.

EX OFFICIO

Hon. Dennis Patterson, M.L.A.

Hon. Richard Nerysoo, M.L.A.

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Legislative Assembly of the Northwest Territories
Special Committee on Constitutional Reform

TECHNICAL BRIEF

to

The House of Commons Special Committee
to Study a Proposed Companion Resolution to the Meech Lake Accord

Background:

The Honourable Michael A. Ballantyne, Minister of Justice and Chairman of the Legislative Assembly of the Northwest Territories Special Committee on Constitutional Reform, is pleased to present on behalf of the Committee this Technical Brief in accordance with the undertaking given in Yellowknife on April 18th, 1990 to the House of Commons Special Committee to Study a Proposed Companion Resolution to the Meech Lake Accord.

Chairman Charest in remarks to Mr. Gordon Robertson during Committee hearings on April 11th, 1990 in Ottawa, indicated that the Committee would be conducting further research into the issue of provincial status for the north. This Technical Brief is also intended as a contribution to that research effort.

Contents

This Technical Brief contains:

PAGE 2 - a summary of the recommendations of the Government of the Northwest Territories;

PAGE 4 - an analysis of the existing provisions of the Constitution relating to the establishment of new provinces which demonstrates that the New Brunswick proposal is consistent with the amending formula contained in the Meech Lake Accord;

PAGE 12 - a procedural option to bridge the ratification of the Meech Lake Accord and the Companion Resolution;

PAGE 14 - a summary and consolidated text of constitutional amendments for addition to the McKenna proposal to meet the concerns of the Northwest Territories without affecting Quebec's five demands.

LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES
SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

SUMMARY OF RECOMMENDATIONS

A. Procedure for Bridging the Meech Lake Accord and the New Brunswick Companion Resolution

1. It is proposed that a "Third Resolution" be adopted prior to June 23, 1990. This resolution would relate only to procedural matters. It would provide for an amendment to Part V of the Constitution Act, 1982. This amendment would have the effect of postponing the "coming into force" of the Meech Lake Amendment until a Companion Resolution comes into force. The amendment would require a constitutional conference to resolve outstanding issues, and would contain a commitment by all governments to the principle of constitutional renewal to bring about the full and active participation of all provinces and territories in Canada's constitutional evolution.

2. The legal text for this "Third Resolution" is contained on page 12.

B. The Process of Constitutional Reform

1. The participation of elected representatives from the territorial governments in processes of constitutional reform must be guaranteed through participation in all conferences and meetings of First Ministers.

2. Special consideration must be given to establishing a process for resolving outstanding issues relating to the aboriginal peoples of Canada. The aboriginal peoples must participate directly in any such process.

3. Whether or not the Meech Lake Accord is ratified there must be special consideration given to the process of constitutional reform:

   - A system of public hearings or referenda should be adopted to obtain the views of Canadians before amendments are finalized.

   - Not every issue is a constitutional issue. A system for screening issues before they become part of a constitutional agenda should be considered. Such a system should also include a role for Canadians to present their views.

- Consideration should be given to the need for annual constitutional conferences. The political debate on national issues should be conducted in the House of Commons and the Senate except in exceptional circumstances.

4. The conference provided for in section 49 of the Constitution Act, 1982 should be convened in the near future to discuss the amending formulae and processes for including Canadians more directly in discussions on the processes of constitutional reform.

C. Recommendations on the Legal Text

1. The New Brunswick Companion Resolution, if it were ratified, would address many of the substantive concerns which the Government and Legislative Assembly of the Northwest Territories have with the legal text of the Meech Lake Accord. However, the Northwest Territories recommends some additions to the Companion Resolution to address outstanding concerns.

2. A summary of the proposed additions to the legal text is found on page 14. A consolidated text of the Meech Lake Accord, New Brunswick Companion Resolution and Northwest Territories proposals is found on page 18.

ANALYSIS

Establishment of New Provinces: The New Brunswick Proposal

The New Brunswick proposal for a companion resolution proposes that a new section, 43.1, be added to the Constitution Act, 1982 to meet the concerns of the Northwest Territories and Yukon with respect to provincehood for the north. The New Brunswick proposal reads as follows:

> 43.1 Notwithstanding paragraph 41(i), an amendment to the Constitution of Canada in relation to the establishment of new provinces in the territories may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons.

Interpreting the Meech Lake Amending Formula

Some witnesses before the House of Commons Special Committee have suggested that the New Brunswick proposal would "simply cancel out what is now in the Meech Lake Accord", or that it would represent "a difficult reversal" of an element of Meech Lake which would be unacceptable to Quebec and perhaps other provinces. [Presentation by Professor Peter Russell, April 11, 1990, unofficial transcript]. On careful examination, however, it appears that this is an interpretation which does not take into account other provisions of the Constitution and may misinterpret the effect of the amending formula on the establishment of new provinces.

Section 42(1)(f) of the Constitution Act, 1982 has commonly been interpreted to date as giving provinces a role in the establishment of new provinces. Section 42(1)(f) will become section 41(i) under the Meech Lake Accord and therefore, according to some interpretations, each province would have a veto over the establishment of new provinces. Section 41(i) reads as follows:

> 41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:
>
> (i) notwithstanding any other law or practice, the establishment of new provinces; ...

The Importance of the New Brunswick Proposal in Relation to Establishing New Provinces

The analysis which follows provides an alternative interpretation to the sections quoted above which leads to the conclusion that provinces do not have any role in the establishment of new provinces other than in respect of consequential amendments to the Constitution of Canada having a direct effect on the provinces in constitutional law.

Parliament throughout Canadian history has had exclusive jurisdiction over the establishment of new provinces. It must be pointed out that at no time since the amending formulae were created in 1982 have the provinces provided any substantiated or defensible arguments:

1. to demonstrate that the creation of new provinces will affect any provincial powers, rights or privileges under the Constitution of Canada;

2. to justify an extension of provincial jurisdiction to matters directly affecting the constitutional status and development of the territories;

3. to demonstrate that the political and economic effects associated with establishing new provinces constitute a rationale for provincial involvement in the establishment of new provinces, particularly when other more significant political and economic issues affecting provinces are not caught by any amending formula.

The New Brunswick Proposal is a necessary addition to the Meech Lake Accord to verify the alternative interpretation set out below. This alternative interpretation is more consistent with the history and constitutional principles underlying the establishment of new provinces and our federal system generally. In the Canadian federation the provinces have not had jurisdiction over matters outside their boundaries. To interpret the amending formula otherwise would lead to the perverse conclusion that the constitutional development and status of the territories are matters which are now ultimately controlled by the provinces.

The Power to Create New Provinces

The Constitution Act, 1871 vests substantive legislative powers in Parliament. The establishment of new provinces is a "matter" within the authority of Parliament under this Act. The Act has

never been appealed or directly amended in this regard. The 1871 Act continues to be "part of the Constitution of Canada" by virtue of s.52(2)(b), and is listed as item five in the schedule to the Constitution Act, 1982.

Effect of the 1982 Amending Formulae on the 1871 Act

The amending formulae set out in Part V of the Constitution Act, 1982 are procedural matters. Part V is entitled "Procedure for Amending the Constitution of Canada". In discussing the relationship between the Charter of Rights and the amending procedures in Part V, the Yukon Court of Appeal stated in Peniket v. A.G. of Canada (leave to appeal to the Supreme Court of Canada denied) that:

> The word "matters" in section 32(1) of the Charter parallels its use in sections 91 and 92 of the Constitution Act, 1867. Constitutional powers in Canada have always been divided between Parliament and the provincial legislative assemblies by these sections.
>
> A constitutional amendment is not a "matter" within the authority of either Parliament or the provinces. The amending power is vested in a joint decision of both federal and provincial authority.

Section 32(1)(a) of the Charter of Rights and Freedoms is intended to confirm that the Charter applies, inter alia, to "all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories". The decision in the Peniket case leads to the conclusion that we must draw a distinction between the word "matters" in the context of a division of powers, and the word "matters" as it is used in the Part V amending formulae. The 1871 Act clearly vests in Parliament the legislative power to create new provinces. It must be remembered that the vesting of this "matter" in Parliament under the 1871 Act pre-dated Parliament's power to amend the Constitution of Canada and therefore it should not be confused with the "matters" referred to in Part V.

Provinces Were Not Given Jurisdiction over New "Matters" by the Amending Formulae

Careful reading of the amending formula in section 42 of the Constitution Act, 1982 (and the relevant section of the Meech Lake Accord) reveals that there has been no conferral of new legislative powers to the provinces in respect of the establishment of new

provinces. In other words, the establishment of new provinces is not a "matter" which is now within the powers of the existing provinces.

Prior to 1982, Parliament had the power to amend the Constitution of Canada by virtue of section 91(1) which was added by the Constitution Act (No.2), 1949. That power allowed Parliament to amend any part of the Constitution of Canada:

> ... except as regards matters coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces or as regards rights or privileges by this or any other constitutional act granted or secured to the legislature or the government of a province....(Emphasis added.)

The establishment of new provinces was a matter exclusively within the power of Parliament under the 1871 Act. So prior to 1982, Parliament could have amended the 1871 Act unilaterally. With the repeal of section 91(1) in 1982, Parliament is now only able to amend the 1871 Act under the procedures prescribed by Part V of the Constitution Act, 1982. But this change in amending formulae did not alter Parliament's exclusive legislative jurisdiction to establish new provinces under the 1871 Act.

What Occurs When a New Province is Established?

The federal Acts establishing Manitoba, Alberta and Saskatchewan serve as examples of the sorts of things contained in establishment Acts for new provinces. Some of the key elements are as follows:

a) identification of boundary
b) making the Constitution Acts apply mutatis mutandis to the new province
c) representation in the Senate
d) representation in the House of Commons
e) identification of executive power
f) establishment of a legislature
g) continuation of courts
h) education provisions
i) annual subsidies
j) public lands.

What Amendments are Caught by the 1982 Amending Formula?

The amending formula in section 42 applies only to "an amendment to the Constitution of Canada". As noted above the 1871 Act is part of the Constitution of Canada. In other words, the amending formula

would be engaged not when a new province is established, but rather in the case where Parliament seeks to amend the 1871 Act or makes some other amendment, as a consequence of establishing a new province, which affects powers, rights or privileges of existing provinces under the Constitution. This interpretation is consistent with the other amending formulae contained in the Constitution Act, 1982.

The 1871 Act provides that at the time of establishment of a new province Parliament may make provision for the constitution and administration of any such province and for its representation in Parliament. Pursuant to the 1871 Act, Parliament is not able to alter the provisions of the Act establishing the new province once it has been passed. After it has been established, the new province has powers to amend its own Constitution. A provision to this effect used to be contained in s.92(1) of the Constitution Act, 1867 but this was repealed in 1982 and replaced by section 45 of the Constitution Act, 1982.

It is clear that the federal legislation that would establish a constitution for a new province need not lead to an amendment of the Constitution which would affect any existing provinces. The federal Act setting out the new province's constitution need not even become part of the "Constitution of Canada" as that term is defined by section 52 of the Constitution Act, 1982. Provinces such as British Columbia and Nova Scotia for example, have constitutions which are not contained wholly within the "Constitution of Canada" [see Dixon v. AG of B.C.; MacLean v. AG of Nova Scotia].

As indicated above, the 1871 Act makes specific reference to provisions for the representation of the new province in the Senate and House of Commons. It must be noted however, that the two northern territories already have guaranteed representation in the House of Commons and the Senate under the Constitution of Canada by virtue of the Constitution Act (No.1), 1975 and the Constitution Act (No.2), 1975. The establishment of a new province would not necessarily lead to a change in this representation.

Any other consequential amendments to existing sections of the "Constitution of Canada" might, depending on the subject matter, require resolutions of provincial legislatures under the amending formulae in the Constitution Act, 1982. However, a review of the specific matters enumerated in sections 41 and 42 of the Constitution Act, 1982 does not reveal any matter which would likely be the subject of an amendment when a new province is established. Once a new province is in existence, Parliament and the legislature of the new province could initiate any "house keeping" amendments that might be necessary by using the s.43 formula.

Protecting Provincial Interests by Opting Out

There appears to be a common misunderstanding that provincial powers, rights or privileges under the Constitution will be affected by the creation of new provinces, although no province has yet articulated how this could happen.

The powers of provinces relate to matters within the province. Section 38(2) and (3) of the Constitution Act, 1982 permit an existing province to opt out of any amendment that "derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government" of that province. Clearly these provisions protect the existing provinces from any consequential amendment to the "Constitution of Canada" that might be contained in any federal Act to establish a new province passed pursuant to the 1871 Act.

Section 42(2), it will be noted, does not allow a province to opt out of an amendment to the Constitution in relation to the establishment of new provinces. As stated above, if this is interpreted to mean an amendment to the 1871 Act, the prohibition against opting out is logical: the power to create new provinces lies exclusively with Parliament. The only change that could be made to the 1871 Act that would change that exclusivity would be a sharing of the power with the provinces. This would be adding to provincial powers rather than derogating from provincial powers and would fall within s.38(1) of the Constitution Act, 1982.

It must also be noted that the section 38 amending formula, the so-called "7/50 formula", actually requires "two thirds of the provinces" for an amendment. The use of a ratio in this section, instead of a fixed number such as "7", indicates that the drafters contemplated an increase or decrease in the number of provinces.

The operation of this amending formula can be affected in two ways

a) an increase or decrease in the number of provinces
b) an increase or decrease in the population in some or all of the provinces (the population of the territories is not included in the calculation under section 38, regardless of its size).

While variations in the number of provinces, or population size in any particular province, might affect the numerical operation of the amending formula these are matters over which provinces have not, and should not, have any control.

Fluctuations in population in another province and establishment of new provinces, are very clearly matters outside, as opposed to within, a province. The opting out provision allows a province to "defend" itself against any amendment which would affect its powers

rights or privileges. However, to interpret the formula as giving provinces an active role in creating new provinces is as repugnant as finding that the Constitution now permits provinces to tamper with or influence population growth in other provinces.

Protecting Provincial Interests Through a Veto

If the Meech Lake Accord were ratified, any amendment to the Constitution of Canada in relation to a matter enumerated in s.41 of the Constitution Act, 1982 would require the consent of all the provinces and Parliament. Again, the existing provinces are completely protected. The veto power could be exercised wherever a provincial legislature believed its interests would be adversely affected. So after Meech Lake, the 1871 Act could not be amended to add powers to the provinces unless all provinces agreed. As indicated above, under s.42 and s.38(1) in the Constitution Act, 1982 only seven provinces having 50 percent of the population of all the provinces would have been required to make such a change.

The contention that establishing new provinces will make it more difficult to achieve unanimity for future constitutional amendments, even if it is true, does not appear to have any direct bearing in constitutional law. Achieving unanimity is dependent on politics, not on law. The unanimity formula is based on the principle of provincial equality. It was not intended as a formula to exclude regions or provinces based on how they might vote on an issue.

Conclusion

The New Brunswick proposal for a new s.43.1 would clarify that Parliament may continue to establish new provinces in the territory pursuant to the 1871 Act, notwithstanding s.41(i) of the Meech Lake Accord. However, section 41(i) of the Meech Lake Accord would not be without meaning: it would be engaged if there were ever an attempt to alter the 1871 Act or Parliament's exclusive power under the 1871 Act. Furthermore, an amendment to the Constitution of Canada which was made as a consequence of establishing a new province, would still require provincial resolutions if a provincial power, right or privilege under the Constitution were affected.

Confusion between ordinary politics and constitutional law appears to lie at the heart of the desire of some provinces to control the constitutional status and development of the territories. Using the New Brunswick proposal for guidance, it is possible to interpret the various provisions of the Constitution Acts, 1867 to 1982, in a manner consistent with the principle that provinces in our

federal system should not be empowered by the Constitution to meddle in the affairs of other jurisdictions, whether they be provinces or territories.

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LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES
SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

A PROCEDURAL MECHANISM TO ADDRESS THE CURRENT IMPASSE

A Third Resolution:

The Northwest Territories Special Committee on Constitutional Reform has recommended that the Meech Lake Accord and New Brunswick Companion Resolution, or some variation of it, should be "ratified" at the same time. Considering the complexity of issues such as Senate reform and other matters it is unlikely that a complete Companion Resolution could be negotiated by June 23, 1990.

Therefore, the Northwest Territories Special Committee recommends consideration of a procedural mechanism which would allow the Meech Lake Accord and Companion Resolution to "come into force" at the same time. The Meech Lake Accord could be ratified by June 23, 1990 but the amendments flowing from it would not come into force until a Companion resolution has been ratified.

The mechanism proposed is a "Third Resolution" which deals only with procedural matters. This resolution would be ratified prior to June 23, 1990 and a proclamation of the Governor General would issue prior to June 23, 1990 to add this procedural mechanism to the Constitution of Canada. All substantive discussions on the Meech Lake Accord and Companion resolution could then continue at the constitutional conferences required by this procedural section. During the "cooling off" period, leading up to this conference, a more balanced and complete vision of Canada should be sought.

The Third Resolution would be a schedule to an Accord reached by First Ministers. The Accord would contain commitments by Manitoba, New Brunswick and Newfoundland to ratify the Meech Lake Accord prior to June 23, 1990.

The text of the proposed amendment follows:

"Constitution Act, 1982

The Constitution Act, 1982 is amended by adding thereto, immediately after section 48 thereof, the following section:

48.1 (1) Notwithstanding any other provision of this Act, an amendment to the Constitution of Canada pursuant to the Constitution Amendment, 1987 proposed by the 1987

Constitutional Accord (Meech Lake Accord) shall not come into force until the repeal of this section.

(2) This section may be repealed only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province.

(3) The government of Canada and the provincial governments are committed to the principle of constitutional renewal to bring about the full and active participation of all provinces and territories in Canada's constitutional evolution.

(4) A constitutional conference composed of the Prime Minister of Canada, the first ministers of the provinces, and the elected leaders of the governments of the Yukon Territory and the Northwest Territories, that includes in its agenda the items referred to in this section, will be convened by the Prime Minister of Canada by June 23, 1991.

(5) The Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in discussions on any item on the agenda of a conference convened under subsection (4), that, in the opinion of the Prime Minister, directly affects the aboriginal peoples of Canada."

LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES
SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

SUMMARY OF

PROPOSED ADDITIONS TO THE NEW BRUNSWICK COMPANION RESOLUTION

All provisions of the New Brunswick proposal would remain the same except for the additions listed below.

Constitution Act, 1867

1. Add to the new section 2 of the Constitution Act, 1867 the following:

"2.(1) ...

(a.1) the recognition that the distinct societies of aboriginal peoples within Canada constitute a fundamental characteristic of Canada; and

2(2.1) The role of the Parliament and Government of Canada to promote the fundamental characteristics of Canada referred to in paragraphs (1)(a.1) and (1)(a) is affirmed."

2. Renumber s.148 of the Constitution Act, 1867 as s.148(1) and add the following subsection:

"148.(2) The Prime Minister of Canada shall invite the elected leaders of the governments of the Yukon Territory and the Northwest Territories to participate in discussions at conferences convened under subsection (1)."

Constitution Act, 1982

3. Add to the Constitution Act, 1982 immediately after section 36 the following heading and section:

"Constitutional Conference

37.(1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once every two years, commencing in 1990.

(2) A conference convened under subsection (1) shall have included on its agenda items respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions at the conferences convened under subsection (1).

(3) The Prime Minister of Canada shall invite the elected leaders of the governments of the Yukon Territory and the Northwest Territories to participate in discussions at conferences convened under subsection (1)."

4. Add to paragraph 43(1)(a) of the Constitution Act, 1982 the following:

"43.(1) ...

(a) any alteration to the boundaries between provinces, between provinces and territories, or between territories, and

(b) ...

may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province or territory to which the amendment applies."

5. Add to the Constitution Act, 1982 immediately after s.46.1 the following section:

"46.(2) The procedures for amendment under section 43(1) may be initiated either by the Senate or the House of Commons or by the legislative assembly of a territory."

6. Add to section 50 of the Constitution Act, 1982 the following:

"50.(1.1) The Prime Minister of Canada shall invite the elected leaders of the governments

of the Yukon Territory and the Northwest Territories to participate in discussions at conferences convened under subsection (1).

30.(2) ...

(a.1) constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples, where a conference has not been convened on such matters in that year under section 37."

CONSOLIDATED TEXT OF THE NORTHWEST TERRITORIES PROPOSAL AND NEW BRUNSWICK RESOLUTION

SCHEDULE

CONSTITUTION AMENDMENT, 1987

Note: The text of the Northwest Territories proposal is contained in square brackets []. New Brunswick's proposals are underlined. The Northwest Territories supports the New Brunswick proposals, and to reflect this square brackets have been placed around the underlined text.

Constitution Act, 1867

1. The Constitution Act, 1867 is amended by adding thereto, immediately after section 1 thereof, the following section:

"2. (1) The Constitution of Canada shall be interpreted in a manner consistent with

[(a.1.) the recognition that the distinct societies of aboriginal peoples within Canada constitute a fundamental characteristic of Canada; and]

(a) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and

(b) the recognition that Quebec constitutes within Canada a distinct society; and

[(c) the recognition that within New Brunswick, the English linguistic community and the French linguistic community have equality of status and equal rights and privileges.]

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristics of Canada referred to in paragraph (1)(a) is affirmed.

(2.1) The role of the Parliament and Government of Canada to promote the fundamental characteristic[s] of Canada referred to in paragraph[s (1)(a.1) and] (1)(a) is affirmed.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) is affirmed.

(3.1) The role of the legislature and Government of New Brunswick to preserve and promote the equality of status and equal rights and privileges of the two linguistic communities referred to in paragraph (1)(c) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

"25.(1) Where a vacancy occurs in the Senate, the government of the province or territory to which the vacancy relates may, in relation to that vacancy, submit to the Queen's Privy Council for Canada the names of persons who may be summoned to the Senate.

(2) Until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 41 of the Constitution Act, 1982, the person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted under subsection (1) by the government of the province or territory to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"Agreements on Immigration and Aliens

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement

relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

95B. (1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provisions of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

(3) The Canadian Charter of Rights and Freedoms applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

95C. (1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(a) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(b) in such other manner as is set out in the agreement.

95D. Sections 46 to 48 of the Constitution Act, 1982 apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the Constitution Act, 1982, but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1).*

4. The said Act is further amended by adding thereto, immediately preceding section 96 therefor, the following heading:

"General"

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"Courts Established by the Parliament of Canada"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"Supreme Court of Canada

101A. (1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.

101B. (1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

101C. (1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province or territory may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province or territory and are qualified under section 101B for appointment to that court.

(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province, or territory, other than Quebec.

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

101E. (1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

"106A. (1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

8. The said Act is further amended by adding thereto the following heading and sections:

"XII - CONFERENCES ON THE ECONOMY AND OTHER MATTERS

148. [(1)] A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

(2) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in discussions at conferences convened under subsection (1).

XIII - REFERENCES

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

( ) Section 36 of the Constitution Act, 1982 is amended by adding thereto the following subsection:

"(3) The Senate shall, in 1991 and every five years thereafter, carry out an assessment of the results achieved in relation to the commitments of Parliament the legislatures the Government of Canada and the provincial governments set out in this section and a report of every such assessment shall be presented to the conference next convened under section 148 of the Constitution Act, 1867 after the assessment is completed."

( ) The said Act is further amended by adding thereto, immediately after section 36 thereof, the following heading and section:

"CONSTITUTIONAL CONFERENCE

37. (1) A Constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once every two years, commencing in 1990.

(2) A conference convened under subsection (1) shall have included on its agenda items respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions at the conferences convened under subsection (1).

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions at the conferences convened under subsection (1)."

9. Sections 40 to 42 of the Constitution Act, 1982 are repealed and the following substituted therefor:

"40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(b) the powers of the Senate and the method of selecting Senators;

(c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(d) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;

(e) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(f) subject to section 43, the use of the English or the French language;

(g) the Supreme Court of Canada;

(h) the extension of existing provinces into the territories;

(i) notwithstanding any other law or practice, the establishment of new provinces; and

(j) an amendment to this Part."

( ) Section 43 of the said Act is renumbered as subsection 43(1) [and amended as follows]:

"(1) (a) any alteration to the boundaries between provinces, [between provinces and territories, or between territories,] and

may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province [or territory] to which the amendment applies."

( ) [The said section] is further amended by adding thereto the following subsection:

"(2) An Amendment to the Act of the Legislature of New Brunswick entitled An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick, chapter 0-1.1 of the Acts of New Brunswick 1981, may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of New Brunswick."

[( ) The said Act is further amended by adding thereto, immediately after section 43 thereof, the following section:]

"43.1 Notwithstanding paragraph 41(i), an amendment to the Constitution of Canada in relation to the establishment of new provinces in the territories may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons."

10. Section 44 of the said Act is repealed and the following substituted therefor:

"44. Subject to section 41, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons."

11. Subsection 46(1) of the said Act is repealed and the following substituted therefor:

"46. (1) The procedures for amendment under sections 38, 41 and 43 may be initiated either by the Senate or House of Commons or by the legislative assembly of a province.

46.1 No measure relating to an amendment to the Constitution of Canada may be adopted by the House of Commons or the legislative assembly of a province pursuant to section 38, 41, 43, 43.1 or 46 unless public hearings in relation thereto are first held by the House of Commons or legislative assembly, as the case may be."

( ) The said Act is further amended by adding thereto immediately after section 46.2 thereof, the following section:

46.2 The procedures for amendment under section 43.1 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a territory.

12. Subsection 47(1) of the said Act is repealed and the following substituted therefor:

"47. (1) An amendment to the Constitution of Canada made by proclamation under section 38, 41 or 43 or 43.1 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing this issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution."

13. Part VI of the said Act is repealed and the following substituted therefor:

"PART VI

CONSTITUTIONAL CONFERENCES

50. (1) A constitutional conference composed of the Prime Minister of Canada and the first minister of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

(1.1) The Prime Minister of Canada shall invite the elected leaders of the governments of the Yukon Territory and the Northwest Territories to participate in discussions at conferences convened under subsection (1).

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(a) Senate reform, including the role and functions of the senate, its powers, the method of selecting Senators and representation in the Senate;

(a.1) constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples [where a conference has not been convened on such matters in that year under section 37;]

(b) roles and responsibilities in relation to fisheries; and

(c) such other matters as are agreed upon.

(3) The matters referred to in paragraph (2)(b) do not include issues relating to jurisdiction and are not required to be included on the agenda of conferences convened under subsection (1) after the first such conference is convened.

(4) The Prime Minister of Canada shall invite representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, to participate in the discussions on the matters referred to in paragraph (2)(a.1) at the conferences convened under subsection (1)."

14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(d) any other amendment to the Constitution of Canada.

15. Section 61 of the said Act is repealed and the following substituted therefor:

"61. A reference to the Constitution Act, 1982, or a reference to the Constitution Acts 1867 to 1982, shall be deemed to include a reference to any amendments thereto."

General

16. Nothing in section 2 of the Constitution Act, 1867 affects section 25 or 27 or 28 of the Canadian Charter of Rights and Freedoms, section 35 of the Constitution Act, 1982 or classes 24 of section 91 of the Constitution Act, 1867.

CITATION

17. This amendment may be cited as the Constitution Amendment, 1987.

11. THE BRITISH NORTH AMERICA ACT, 1871

34-35 Victoria, c. 28.

An Act respecting the establishment of Provinces in the Dominion of Canada.

[29th *June, 1871*]

Whereas doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in Territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

. . .

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited for all purposes as The British North America Act, 1871.

Parliament of Canada may establish new Provinces and provide for their representation, etc., thereof. 2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.

Alteration of limits of Provinces. 3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

Parliament of Canada may legislate for any territories not included in a Province. 4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

Confirmation of Acts of Parliament of Canada, 32 & 33 Vict. (Canada) cap. 3, 33 Vict. (Canada) cap. 3.

5. The following Acts passed by the said Parliament of Canada, and intituled respectively,—"An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada"; and "An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of "the Province of Manitoba," shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor General of the said Dominion of Canada.

Limitation of powers of Parliament of Canada to legislate for an established Province.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

No. 41

CONSTITUTION ACT (No. 1), 1975

(*BRITISH NORTH AMERICA ACT, 1975*)

[Note: The short title (in italics) of this Act, which was enacted as Part I of the *Northwest Territories Representation Act*, was changed to the present title by the *Constitution Act, 1982* (No. 44 *infra*). See also the note to section 3 of this Act.]

23-24 Elizabeth II, c. 28 (Canada)

[Assented to 13th March, 1975]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

. . . . . .

PART I

CONSTITUTION ACT, 1867

2. Subsection 51(2) of the *Constitution Act, 1867*, as enacted by the *British North America Act, 1952*, is repealed and the following substituted therefor:

Yukon Territory and Northwest Territories

"(2) The Yukon Territory as bounded and described in the schedule to chapter Y-2 of the Revised Statutes of Canada, 1970, shall be entitled to one member, and the Northwest Territories as bounded and described in section 2 of chapter N-22 of the Revised Statutes of Canada, 1970, shall be entitled to two members."

Short title and citation

3. *This Part may be cited as the British North America Act, 1975, and the British North America Acts, 1867 to 1974-75 and this Part may be cited together as the British North America Acts, 1867 to 1975.*

Nº 41

LOI CONSTITUTIONNELLE Nº 1 DE 1975

(*ACTE DE L'AMÉRIQUE DU NORD BRITANNIQUE, 1975*)

[Note : Le titre abrégé (en italique) de cette loi, constituant la partie I de la *Loi sur la représentation des territoires du Nord-Ouest*, a été remplacé aux termes de la *Loi constitutionnelle de 1982* (nº 44 *infra*). Voir aussi la note accompagnant l'article 3.]

23-24 Elizabeth II, ch. 28 (Canada)

[Sanctionnée le 13 mars 1975]

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

. . . . . .

PARTIE I

LOI CONSTITUTIONNELLE DE 1867

2. Le paragraphe 51(2) de la *Loi constitutionnelle de 1867*, dans la version qu'en donne l'*Acte de l'Amérique du Nord britannique, 1952*, est abrogé et remplacé par ce qui suit:

Territoire du Yukon et territoires du Nord-Ouest

«(2) Le territoire du Yukon et les territoires du Nord-Ouest, dans les limites et selon la description qu'en donnent l'annexe du chapitre Y-2 et l'article 2 du chapitre N-22 des Statuts revisés du Canada de 1970, ont droit respectivement à un et à deux députés.»

Titre abrégé et référence

3. *La présente Partie peut être citée sous le titre: Acte de l'Amérique du Nord britannique, 1975; les Actes de l'Amérique du Nord britannique, 1867 à 1974-75, ainsi que la présente Partie, peuvent être cités ensemble sous le titre:*

Short title

3. This Part may be cited as the *Constitution Act (No. 1), 1975*.

[Note: The original section 3 (in italics) was repealed and a new section substituted by section 31 of the *Miscellaneous Statute Law Amendment Act, 1977* (No. 43) *infra*). The section enacted in 1977 was repealed and the new section 3 substituted by the *Constitution Act, 1982* (No. 44 *infra*).]

Actes de l'Amérique du Nord britannique, 1867 à 1975.

Titre abrégé

3. Titre abrégé de la présente partie : *Loi constitutionnelle n° 1 de 1975*.

[Note : L'article 3 (dans la version originale est en italique) a été abrogé et remplacé aux termes de l'article 31 de la *Loi corrective de 1977* (n° 43) *infra*) et, de nouveau, aux termes de la *Loi constitutionnelle de 1982* (n° 44 *infra*).]

No. 42

CONSTITUTION ACT (No. 2), 1975

(*BRITISH NORTH AMERICA ACT, (No. 2) 1975*)

[Note: The present short title was substituted for the original short title (in italics) by the *Constitution Act, 1982* (No. 44 *infra*).]

23-24 Elizabeth II, c. 53 (Canada)

An Act to amend the Constitution Acts, 1867 to 1975

[Assented to 19th June, 1975]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Constitution of Senate altered

1. Notwithstanding anything in the *Constitution Act, 1867*, or in any Act amending that Act, or in any Act of the Parliament of Canada, or in any order in council or terms or conditions of union made or approved under any such Act,

(*a*) the number of Senators provided for under section 21 of the *Constitution Act, 1867*, as amended, is increased from one hundred and two to one hundred and four;

(*b*) the maximum number of Senators is increased from one hundred and ten to one hundred and twelve; and

(*c*) the Yukon Territory and the Northwest Territories shall be entitled to be represented in the Senate by one member each.

"Province"

2. For the purposes of this Act, the term "Province" in section 23 of the *Constitution Act, 1867* has the same meaning as is assigned to the term "province" by section 28 of the *Interpretation Act*.

No. 42

LOI CONSTITUTIONNELLE N° 2 DE 1975

(*ACTE DE L'AMÉRIQUE DU NORD BRITANNIQUE N° 2, 1975*)

[Note : Le titre abrégé (en italique) a été remplacé aux termes de la *Loi constitutionnelle de 1982* (n° 44 *infra*).]

23-24 Elizabeth II, ch. 53 (Canada)

Loi modifiant les Lois constitutionnelles de 1867 à 1975

[Sanctionnée le 19 juin 1975]

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

Modification à la composition du Sénat

1. Par dérogation à la *Loi constitutionnelle de 1867*, aux lois modifiant cette loi, aux lois du Parlement du Canada, aux arrêtés en conseil ou aux termes et conditions d'union pris ou approuvés en vertu de ces lois,

a) le nombre de sénateurs prévu à l'article 21 de la *Loi constitutionnelle de 1867*, dans sa forme modifiée, est porté de cent deux à cent quatre;

b) le nombre maximal de sénateurs est porté de cent dix à cent douze; et

c) le territoire du Yukon et les territoires du Nord-Ouest ont le droit d'être représentés au Sénat par un sénateur chacun.

«Province»

2. Pour l'application de la présente loi, le terme «province» a, à l'article 23 de la *Loi constitutionnelle de 1867*, le même sens que dans l'article 28 de la *Loi d'interprétation*.

Short title and citation

3. This Act may be cited as the British North America Act, (No. 2) 1975, and shall be included among the Acts that may be cited as the British North America Acts, 1867 to 1975.

Titre abrégé et citation

3. La présente loi peut être citée sous le titre: Acte de l'Amérique du Nord britannique n° 2, 1975, et doit être comprise dans la liste des lois qui peuvent être citées sous le titre: Actes de l'Amérique du Nord britannique, 1867 à 1975.

Short title

3. This Act may be cited as the *Constitution Act (No. 2), 1975.*

[Note: Section 3 (in italics) was repealed and the new section substituted by the *Constitution Act, 1982* (No. 44 *infra*).]

Titre abrégé

3. Titre abrégé : *Loi constitutionnelle n° 2 de 1975.*

[Note : L'article 3 (en italique) a été abrogé et remplacé aux termes de la *Loi constitutionnelle de 1982* (n° 44 *infra*).]

APPENDIX D

FIRST MINISTERS' MEETING ON THE CONSTITUTION

FINAL COMMUNIQUE

June 9-10, 1990

1990 CONSTITUTIONAL AGREEMENT

WHEREAS on April 30, 1987, the Prime Minister of Canada and the Premiers reached agreement in principle on means to bring about the full and active participation of Quebec in Canada's constitutional evolution;

AND WHEREAS on June 3, 1987, all first ministers signed the 1987 Constitutional Accord and committed themselves to introducing as soon as possible the Constitution Amendment, 1987 in Parliament and the provincial legislative assemblies;

AND WHEREAS the Constitution Amendment, 1987 has been authorized by Parliament and the legislative assemblies of Quebec, Saskatchewan, Alberta, Prince Edward Island, Nova Scotia, Ontario and British Columbia:

1. THE MEECH LAKE ACCORD

The Premiers of New Brunswick, Manitoba and Newfoundland undertake to submit the Constitution Amendment, 1987 for appropriate legislative or public consideration and to use every possible effort to achieve decision prior to June 23, 1990.

2. SENATE REFORM

After proclamation, the federal government and the provinces will constitute a commission with equal representation for each province and an appropriate number of territorial and federal representatives to conduct hearings and to report to Parliament and the legislative assemblies of the provinces and territories, prior to the First Ministers' Conference on the Senate to be held by the end of 1990 in British Columbia, on specific proposals for Senate reform that will give effect to the following objectives:

- The Senate should be elected.
- The Senate should provide for more equitable representation of the less populous provinces and territories.
- The Senate should have effective powers to ensure the interests of residents of the less populous provinces and territories figure more prominently in national decision-making, reflect Canadian duality and strengthen the Government of Canada's capacity to govern on behalf of all citizens, while preserving the principle of the responsibility of the Government to the House of Commons.

Following proclamation of the Meech Lake Accord, the Prime Minister and all Premiers agree to seek adoption of an amendment on comprehensive Senate reform consistent with these objectives by July 1, 1995.

The Prime Minister undertakes to report semi-annually to the House of Commons on progress achieved towards comprehensive Senate reform.

The Prime Minister and all Premiers, reaffirming the commitment made in the Edmonton Declaration and the provisions to be entrenched under the Constitution Amendment, 1987, undertook that Senate reform will be the key constitutional priority until comprehensive reform is achieved.

If, by July 1, 1995, comprehensive Senate reform has not been achieved according to the objectives set out above under section 41 of the Constitution Act, 1982, as amended by the Constitution Amendment, 1987, the number of Senators by which a province is entitled to be represented in the Senate will be amended so that, of the total of one hundred and four Senators, the representation of Ontario will be eighteen Senators, the representation of Nova Scotia, New Brunswick, British Columbia, Alberta, Saskatchewan, Manitoba and Newfoundland will be eight Senators each, and the representation of all other provinces and the territories will remain unchanged. In the case of any province whose representation declined, no new appointments would be made until that province's representation had by attrition declined below its new maximum. In the event of such a redistribution of Senate seats, Newfoundland would be entitled to another Member of Parliament in the House of Commons under section 51A of the Constitution Act, 1867.

3. FURTHER CONSTITUTIONAL AMENDMENTS

(1) Charter - Sex Equality Rights

- Add section 28 of the Canadian Charter of Rights and Freedoms to section 16 of the Constitution Amendment, 1987.

(2) Role of the Territories

- In appointments to the Senate and the Supreme Court of Canada.

- In discussions on items on the agenda of annual constitutional and economic conferences where, in the view of the Prime Minister, matters to be discussed directly affect them.

(3) Language Issues

- Add to the agenda of constitutional conferences matters that are of interest to English-speaking and French-speaking linguistic minorities.

- Require resolutions of the House of Commons, the Senate and the legislative assembly of New Brunswick to amend that province's Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick (Bill 88).

(4) Aboriginal Constitutional Issues

- First Ministers' constitutional conferences to be held once every three years, the first to be held within one year of proclamation; representatives of aboriginal peoples and the territorial

PART II

Constitution Act, 1867

8. All that portion of section 22 of the Constitution Act, 1867 following item 4 and preceding the last paragraph thereof is repealed and the following substituted therefor:

"which Four Divisions shall, subject to the provisions of this Act, be represented in the Senate as follows: Ontario by eighteen Senators; Quebec by twenty-four Senators; the Maritime Provinces and Prince Edward Island by twenty Senators, eight thereof representing Nova Scotia, eight thereof representing New Brunswick, and four thereof representing Prince Edward Island; the Western Provinces by thirty-two Senators, eight thereof representing Manitoba, eight thereof representing British Columbia, eight thereof representing Saskatchewan, and eight thereof representing Alberta; Newfoundland shall be entitled to be represented in the Senate by eight members; the Yukon Territory and the Northwest Territories shall be entitled to be represented in the Senate by one member each."

9. Section 27 of the said Act is repealed and the following substituted therefor:

Reduction of Senate to normal number

"27. In case of such addition being at any time made, the Governor General shall not summon any person to the Senate, except on a further like direction by the Queen on the like recommendation, to represent one of the Four Divisions until such Division is represented by the number of Senators provided for by section 22 and no more."

Transitional provision

10. Notwithstanding section 22 of the Constitution Act, 1867, any province that is represented in the Senate on the coming into force of this Part by more Senators than are provided for under that section may continue to be so represented, but no additional persons may be summoned to the Senate to represent that province until the number of Senators representing that province falls below the number set out in section 22, and thereafter, subject to section 26, the number representing that province shall not exceed that number.

11.(1) This Part shall not come into force if an amendment in relation to the Senate that is consistent with the objectives set out in the 1990 Constitutional Agreement signed at Ottawa on June 9, 1990 is made before July 1, 1995.

(2) If an amendment described in subsection (1) is not made before July 1, 1995, this Part shall come into force on that date.

Citation

Citation

12. This amendment may be cited as the Constitution Amendment, (year of proclamation).

5. SECTION 2: CONSTITUTION AMENDMENT, 1987

The Prime Minister and Premiers took note of public discussion of the distinct society clause since its inclusion in the Meech Lake Accord. A number of Canada's most distinguished constitutional authorities met to exchange views on the legal impact of the clause. The Prime Minister and Premiers reviewed their advice and other material.

The Prime Minister, in his capacity as chairman of the Conference, received from the above-noted constitutional authorities a legal opinion which is appended to the final Conference communiqué.

6. NEW BRUNSWICK AMENDMENT

- Add a clause that within New Brunswick, the English linguistic community and the French linguistic community have equality of status and equal rights and privileges.

- Affirm an additional role of the legislature and government of New Brunswick: to preserve and promote the equality of status and equal rights and privileges of the province's two official linguistic communities.

The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the Premier of New Brunswick will lay or cause to be laid before the legislative assembly of New Brunswick, a resolution, in the form appended hereto, and will seek to authorize a proclamation to be issued by the Governor General under the Great Seal of Canada to amend the Constitution of Canada as soon as possible after proclamation of the Constitution Amendment, 1987.

Signed at Ottawa,
June 9, 1990

Fait à Ottawa
le 9 juin 1990

Canada

Ontario

Québec

Nova Scotia
Nouvelle-Écosse

New Brunswick
Nouveau-Brunswick

Manitoba*

British Columbia
Colombie-Britannique

* Subject to the public hearing process

* Sous réserve du processus d'audiences publiques

Prince Edward Island
Île-du-Prince-Édouard

Saskatchewan

Alberta

Newfoundland *
Terre-Neuve

* The Premier of Newfoundland endorses now the undertaking in Part I of this document and further undertakes to endorse fully this agreement if the Constitution Amendment, 1987 is given legislative or public approval following the consultation provided for in Part I.

* Le premier ministre de Terre-Neuve endosse maintenant l'engagement figurant dans la Partie I du présent document et s'engage en outre à endosser la totalité de la présente entente si la Modification constitutionnelle de 1987 reçoit une approbation législative ou publique à Terre-Neuve suite aux consultations prévues à la Partie I.

Ottawa
June 9, 1990

Dear Prime Minister:

In response to certain concerns which have been expressed in relation to section 1 of the proposed Constitution Amendment, 1987 (Meech Lake Accord), it is our pleasure to confirm our opinion on the following.

In our opinion, the Canadian Charter of Rights and Freedoms will be interpreted in a manner consistent with the duality/distinct society clause of the proposed Constitution Amendment, 1987 (Meech Lake Accord), but the rights and freedoms guaranteed thereunder are not infringed or denied by the application of the clause and continue to be guaranteed subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, and the duality/distinct society clause may be considered, in particular, in the application of section 1 of the Charter.

The Constitution of Canada, including sections 91 and 92 of the Constitution Act, 1867, will be interpreted in a manner consistent with the duality/distinct society clause. While nothing in that clause creates new legislative authority for Parliament or any of the provincial legislatures, or derogates from any of their legislative authority, it may be considered in determining whether a particular law fits within the legislative authority of Parliament or any of the legislatures.

Harold A. Beaudoin, Q.C., Q.C.
Professor of Law
University of Ottawa

E. Jean Cameron
Associate Professor
Osgoode Hall Law School
York University

E. Robert A. Edwards, Q.C.
Assistant Deputy Attorney General
Government of British Columbia

Peter W. Hogg, Q.C.
Professor
Osgoode Hall Law School
York University

Katherine Swinton
Professor, Faculty of Law
University of Toronto

Roger Tassé, Q.C., Q.C.
Barrister and Solicitor

Motion for a Resolution to authorize an amendment
to the Constitution of Canada

The (Senate) (House of Commons) (legislative assembly) resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by His Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto, but only after the Constitution Amendment, 1987 comes into force.

SCHEDULE

CONSTITUTION AMENDMENT

PART I

Constitution Act, 1867

1. Section 25 of the Constitution Act, 1867, as enacted by section 2 of the Constitution Amendment, 1987, is amended by adding thereto, immediately after the word "province" wherever it occurs therein, the words "or territory".

2.(1) Subsection 101C(1) of the said Act, as enacted by section 6 of the Constitution Amendment, 1987, is amended by adding thereto, immediately after the word "province" wherever it occurs therein, the words "or territory".

(2) Subsection 101C(4) of the said Act, as enacted by section 6 of the Constitution Amendment, 1987, is amended by adding thereto, immediately after the word "province" where it occurs therein, the words ", or territory,".

3. Section 148 of the said Act, as enacted by section 8 of the Constitution Amendment, 1987, is renumbered as subsection 148(1) and is further amended by adding thereto the following subsection:

Participation of Territories

"(2) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories."

Constitution Act, 1982

4. Section 43 of the Constitution Act, 1982 is renumbered as subsection 43(1) and is further amended by adding thereto the following subsection:

Amendment to New Brunswick Act

"(2) An amendment to the Act of the Legislature of New Brunswick entitled An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick, chapter O-1.1 of the Acts of New Brunswick, 1981, may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of New Brunswick."

5.(1) Subsection 50(3) of the said Act, as enacted by section 13 of the Constitution Amendment, 1987, is amended by adding thereto, immediately after paragraph (a) thereof, the following paragraph:

"(a.1) matters of interest to English-speaking and French-speaking linguistic minorities;"

(2) Section 50 of the said Act, as enacted by section 13 of the Constitution Amendment, 1987, is further amended by adding thereto the following subsection:

Participation of the territories

"(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories."

6. The said Act is further amended by adding thereto, immediately after section 50 thereof, as enacted by section 13 of the Constitution Amendment, 1987, the following section:

Constitutional conference

"51.(1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force and at least once in every third calendar year after the first such conference is convened.

Participation of aboriginal peoples

(2) Each conference convened under subsection (1) shall have included in its agenda matters of interest to the aboriginal peoples of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on those matters.

Participation of territories

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

Non-derogation

(4) Nothing in this section shall be construed so as to derogate from section 35."

Constitution Amendment, 1987

7. Section 16 of the Constitution Amendment, 1987 is amended by adding thereto, immediately after the reference to section 27 where it occurs therein, the following: "or 28".

Motion for a Resolution to authorize an amendment to the Constitution of Canada

The (Senate) (House of Commons) (legislative assembly) resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by His Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE

CONSTITUTION AMENDMENT

Constitution Act, 1867

1. The Constitution Act, 1867 is amended by adding thereto, immediately after section 133 thereof, the following section:

Interpretation

"133.1(1) The Constitution of Canada, as it relates to New Brunswick, shall be interpreted in a manner consistent with the recognition that, within New Brunswick, the English linguistic community and the French linguistic community have equality of status and equal rights and privileges.

Role of legislature and Government of New Brunswick

(2) The role of the legislature and Government of New Brunswick to preserve and promote the equality of status and equal rights and privileges of the two linguistic communities referred to in subsection (1) is affirmed.

Rights of legislatures and governments preserved

(3) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislature or Government of New Brunswick, including any powers, rights or privileges relating to language."

Citation

Citation

2. This amendment may be cited as the Constitution Amendment, (year of proclamation) (New Brunswick).

ENTENTE CONSTITUTIONNELLE DE 1990

Attendu que, le 30 avril 1987, le Premier ministre du Canada et les premiers ministres des provinces ont conclu une entente de principe sur les moyens d'assurer la participation pleine et entière du Québec à l'évolution constitutionnelle du Canada;

Attendu que, le 3 juin 1987, tous les premiers ministres ont signé l'Accord constitutionnel de 1987 et se sont engagés à saisir le plus tôt possible le Parlement et les assemblées législatives provinciales de la Modification constitutionnelle de 1987;

Attendu que la Modification constitutionnelle de 1987 a été autorisée par le Parlement et les assemblées législatives du Québec, de la Saskatchewan, de l'Alberta, de l'Île-du-Prince-Édouard, de la Nouvelle-Écosse, de l'Ontario et de la Colombie-Britannique :

1. ACCORD DU LAC MEECH

Les premiers ministres du Nouveau-Brunswick, du Manitoba et de Terre-Neuve s'engagent à soumettre la Modification constitutionnelle de 1987 à l'examen législatif ou public approprié et à tout mettre en oeuvre afin qu'une décision soit prise avant le 23 juin 1990.

2. RÉFORME DU SÉNAT

Après la proclamation de l'Accord du lac Meech, le gouvernement fédéral et les gouvernements des provinces constitueront une commission où chaque province sera également représentée et qui comprendra un nombre approprié de représentants territoriaux et fédéraux. Cette commission tiendra des audiences et fera rapport au Parlement et aux assemblées législatives des provinces et territoires, avant la Conférence des premiers ministres sur le Sénat qui doit se tenir d'ici la fin de 1990, en Colombie-Britannique, concernant des propositions précises dont la base serait les paramètres suivants :

- Le Sénat devrait être élu.

- Le Sénat devrait garantir une représentation plus équitable des provinces moins peuplées et des territoires.

- Le Sénat devrait détenir des pouvoirs réels afin que la prise des décisions au niveau national tienne davantage compte des intérêts des habitants des provinces moins peuplées et des territoires, afin d'être le reflet de la dualité canadienne et afin que le Gouvernement du Canada soit plus en mesure de gouverner au nom de tous les citoyens, tout en préservant le principe de la responsabilité du Gouvernement envers la Chambre des communes.

Après la proclamation de l'Accord du lac Meech, le Premier ministre du Canada et les premiers ministres de toutes les provinces conviennent de mettre tout en oeuvre pour faire adopter une modification conforme à ces paramètres en vue d'une réforme générale du Sénat d'ici le 1er juillet 1995.

Le Premier ministre du Canada s'engage à faire rapport deux fois par an à la Chambre des communes des progrès realisés en vue d'une réforme générale du Sénat.

Le Premier ministre et les premiers ministres de toutes les provinces réaffirment l'engagement pris dans la Déclaration d'Edmonton et dans les dispositions qui seront consacrées en vertu de la Modification constitutionnelle de 1987 et s'engagent à ce que la réforme du Sénat soit la grande priorité constitutionnelle jusqu'à ce qu'une réforme générale ait pu être réalisée.

Si, d'ici le 1er juillet 1995, une réforme générale du Sénat n'a pu être réalisée conformément aux paramètres énoncés ci-dessus en vertu de l'article 41 de la Loi constitutionnelle de 1982, dans sa forme modifiée par la Modification constitutionnelle de 1987, le nombre de sénateurs par lesquels une province est en droit d'être représentée au Sénat sera modifié de façon que, pour un total de cent quatre sénateurs, la représentation de l'Ontario passe à dix-huit sénateurs, que celle de la Nouvelle-Écosse, du Nouveau-Brunswick, de la Colombie-Britannique, de l'Alberta, de la Saskatchewan, du Manitoba et de Terre-Neuve passe à huit sénateurs chacun, et que la représentation des autres provinces et des territoires demeure inchangée. Dans le cas d'une province dont la représentation diminuerait, aucune autre nomination ne pourra être faite tant que sa représentation ne sera pas descendue, par attrition, sous son nouveau maximum. Si une telle nouvelle répartition des sièges survenait au Sénat, la province de Terre-Neuve serait représentée par un député supplémentaire à la Chambre des communes en vertu de l'article 51A de la Loi constitutionnelle de 1867.

3. FUTURES MODIFICATIONS CONSTITUTIONNELLES

(1) Charte - Droit à l'égalité des sexes

- Adjonction de l'article 28 de la Charte canadienne des droits et libertés à l'article 16 de la Modification constitutionnelle de 1987.

(2) Rôle des territoires

- Dans les nominations au Sénat et à la Cour suprême du Canada.

- Dans les discussions portant sur des questions à l'ordre du jour d'une conférence annuelle des premiers ministres sur la Constitution et l'économie qui, de l'avis du Premier ministre, les touchent directement.

(3) Questions linguistiques

- Inscription à l'ordre du jour des conférences sur la Constitution des questions intéressant les minorités linguistiques d'expression française et d'expression anglaise.

- Obligation d'obtenir le consentement du Sénat, de la Chambre des communes et de l'assemblée législative du Nouveau-Brunswick pour modifier la Loi reconnaissant l'égalité des deux communautés linguistiques officielles au Nouveau-Brunswick (Loi 88).

(4) Questions constitutionnelles intéressant les autochtones

- Tenue tous les trois ans d'une conférence constitutionnelle des premiers ministres, la première devant avoir lieu au plus tard un an après la proclamation. Le Premier ministre inviterait des représentants des peuples autochtones et des gouvernements des territoires à participer aux discussions portant sur les questions intéressant les peuples autochtones du Canada.

Les premiers ministres du Canada et des provinces déposeront ou feront déposer respectivement devant le Sénat et la Chambre des communes et devant les assemblées législatives la résolution dont le texte figure en annexe et chercheront à autoriser la modification de la Constitution du Canada par proclamation du gouverneur général sous le grand sceau du Canada le plus tôt possible après la proclamation de la Modification constitutionnelle de 1987.

4. ORDRE DU JOUR DE FUTURES DISCUSSIONS CONSTITUTIONNELLES

(1) Création de nouvelles provinces dans les territoires

- Le Premier ministre du Canada et les premiers ministres de toutes les provinces ont convenu d'examiner, lors de futures conférences constitutionnelles, différentes approches pour l'accession du Yukon et des Territoires du Nord-Ouest au statut de provinces, y compris la possibilité que seules des résolutions de la Chambre des communes et du Sénat soient nécessaires pour leur reconnaître ce statut, advenant une demande en ce sens de ces territoires.

(2) Reconnaissances constitutionnelles

- Le Premier ministre du Canada et les premiers ministres des provinces ont pris note des efforts déployés à de nombreuses reprises par les premiers ministres au cours des vingt dernières années en vue de rédiger un énoncé de reconnaissances constitutionnelles, efforts qui se sont toujours avérés infructueux.

Le Premier ministre du Canada et les premiers ministres des provinces ont examiné des projets présentés par le gouvernement fédéral et par le Manitoba, la Saskatchewan, l'Ontario et la Colombie-Britannique et ils ont convenu de saisir immédiatement de tous ces projets un comité spécial multipartite de la Chambre des communes. Des audiences publiques à la grandeur du pays débuteraient le 16 juillet 1990 et un rapport concernant le fond et l'emplacement d'une clause compatible avec la Constitution du Canada serait rédigé et présenté aux premiers ministres à leur conférence de 1990.

(3) Examens constitutionnels

- Le Premier ministre du Canada et les premiers ministres de toutes les provinces ont convenu d'examiner conjointement, à la conférence constitutionnelle exigée par l'article 49 de la Loi constitutionnelle de 1982, la totalité du processus permettant de modifier la Constitution, y compris le délai maximal de trois ans prévu à l'article 39(2) de ladite loi, et la question de la tenue obligatoire d'audiences publiques avant l'adoption de toute mesure liée à une modification de la Constitution, dont la révocation d'une résolution constitutionnelle.

- Conformément à l'article 50 de la Loi constitutionnelle de 1982 proposé dans la Modification constitutionnelle de 1987, le Premier ministre du Canada et les premiers ministres des provinces ont également convenu d'examiner en permanence le fonctionnement de la Constitution du Canada, y compris la Charte canadienne des droits et libertés, en vue d'apporter toute modification constitutionnelle qui pourrait s'avérer utile.

5. ARTICLE 2 : MODIFICATION CONSTITUTIONNELLE DE 1987

Compte tenu des discussions publiques qui ont entouré la clause de la société distincte depuis son inclusion dans l'Accord du lac Meech, un certain nombre des constitutionnalistes les plus éminents au Canada se sont rencontrés pour échanger leurs vues sur les répercussions juridiques de la clause. Le Premier ministre du Canada et les premiers ministres des provinces ont examiné leurs recommandations ainsi que d'autres documents.

Le Premier ministre du Canada, en sa qualité de président de la Conférence, a reçu desdits constitutionnalistes une opinion juridique qui est annexée au communiqué final de la conférence.

6. MODIFICATION RELATIVE AU NOUVEAU-BRUNSWICK

- Adjonction d'une disposition selon laquelle, au Nouveau-Brunswick, les communautés francophone et anglophone ont un statut et des droits et privilèges égaux.

- Affirmation du rôle de la législature et du gouvernement du Nouveau-Brunswick de protéger et de promouvoir l'égalité des deux communautés linguistiques de la province en ce qui touche à leur statut et à leurs droits et privilèges.

- Le Premier ministre du Canada et le premier ministre du Nouveau-Brunswick déposeront ou feront déposer respectivement devant le Sénat et la Chambre des communes et devant l'assemblée législative du Nouveau-Brunswick la résolution dont le texte figure en annexe et chercheront à autoriser la modification de la Constitution du Canada par proclamation du gouverneur général sous le grand sceau du Canada le plus tôt possible après la proclamation de la Modification constitutionnelle de 1987.

Signed at Ottawa,
June 9, 1990

Fait à Ottawa
le 9 juin 1990

Canada

Ontario

Quebec

Nova Scotia
Nouvelle-Écosse

New Brunswick
Nouveau-Brunswick

Manitoba*

British Columbia
Colombie-Britannique

* Subject to the public hearing process

* Sous réserve du processus d'audiences publiques

Prince Edward Island
Île-du-Prince-Édouard

Saskatchewan

Alberta

Newfoundland *
Terre-Neuve

* The Premier of Newfoundland endorses now the undertaking in Part I of this document and further undertakes to endorse fully this agreement if the Constitution Amendment, 1987 is given legislative or public approval following the consultation provided for in Part I.

* Le premier ministre de Terre-Neuve endosse maintenant l'engagement figurant dans la Partie I du présent document et s'engage en outre à endosser la totalité de la présente entente si la Modification constitutionnelle de 1987 reçoit une approbation législative ou publique à Terre-Neuve suite aux consultations prévues à la Partie I.

OTTAWA
le 9 juin 1990

Monsieur le Premier ministre,

En réponse à certaines des préoccupations exprimées à l'égard de l'article premier de l'Accord du lac Meech, nous sommes heureux de confirmer notre opinion sur ce qui suit.

À notre avis, toute interprétation de la Charte canadienne des droits et libertés doit concorder avec la disposition relative à la dualité et à la société distincte de la Modification constitutionnelle de 1987 proposée (l'Accord du lac Meech), mais l'application de la clause ne constitue pas une negation ou une violation des droits et libertés garantis par la Charte des droits, lesquels ne peuvent être restreints que par une règle de droit dans des limites qui sont raisonnables et dont la justification peut se démontrer dans le cadre d'une société libre et démocratique, et il peut être tenu compte de la disposition relative à la dualité et à la société distincte, en particulier aux fins de l'application de l'article premier de la Charte.

La Constitution du Canada, y compris les articles 91 et 92 de la Loi constitutionnelle de 1867, sera interprétée d'une manière compatible avec la clause relative à la dualité et à la société distincte. La clause ne crée aucune nouvelle compétence législative au profit du Parlement ou de l'une quelconque des législatures provinciales et ne déroge à aucune de leurs compétences législatives, mais il pourra en être tenu compte pour déterminer si une loi particulière s'inscrit dans les compétences législatives du Parlement ou de l'une des législatures provinciales.

Gérald-A. Beaudoin, O.C., c.r.
Professeur de droit
Université d'Ottawa

B. Jamie Cameron
Professeur associé
École de droit Osgoode Hall
Université York

E. Robert A. Edwards, c.r.
Sous-procureur général adjoint
Gouvernement de la
Colombie-Britannique

Peter W. Hogg, c.r.
Professeur de droit
École de droit Osgoode Hall
Université York

Katherine Swinton
Professeur, Faculté de droit
Université de Toronto

Roger Tassé, O.C., c.r.
Avocat

Motion de résolution autorisant la modification
de la Constitution du Canada

(le Sénat) (la Chambre des communes) (l'assemblée législative) a résolu d'autoriser la modification de la Constitution du Canada par proclamation de Son Excellence le gouverneur général sous le grand sceau du Canada, en conformité avec l'annexe ci-jointe, son entrée en vigueur ne pouvant toutefois précéder celle de la Modification constitutionnelle de 1987.

ANNEXE

MODIFICATION CONSTITUTIONNELLE

PARTIE I

Loi constitutionnelle de 1867

1. L'article 25 de la Loi constitutionnelle de 1867, édicté par l'article 2 de la Modification constitutionnelle de 1987, est modifié par insertion, après «province», de «ou du territoire».

2. (1) Le paragraphe 101C(1) de la même loi, édicté par l'article 6 de la Modification constitutionnelle de 1987, est modifié par insertion, après la première mention de «province», de «ou territoire», et, après la seconde, de «ou de ce territoire».

(2) Le paragraphe 101C(4) de la même loi, édicté par l'article 6 de la Modification constitutionnelle de 1987, est modifié par insertion, après «Québec», de «ou d'un territoire».

3. L'article 148 de la même loi, édicté par l'article 8 de la Modification constitutionnelle de 1987, devient le paragraphe 148(1) et est modifié par adjonction de ce qui suit :

Participation des territoires

«(2) Le premier ministre du Canada invite des représentants élus des gouvernements du territoire du Yukon et des Territoires du Nord-Ouest à participer aux travaux relatifs à toute question placée à l'ordre du jour des conférences visées au paragraphe (1) et qui, selon lui, intéresse directement le territoire du Yukon et les Territoires du Nord-Ouest.»

Loi constitutionnelle de 1982

4. L'article 43 de la Loi constitutionnelle de 1982 devient le paragraphe 43(1) et est modifié par adjonction de ce qui suit :

Modification d'une loi du Nouveau-Brunswick

«(2) Les dispositions de la loi du Nouveau-Brunswick intitulée Loi reconnaissant l'égalité des deux communautés linguistiques officielles au Nouveau-Brunswick, chapitre O-1.1 des Lois du Nouveau-Brunswick, 1981, ne peuvent être modifiées que par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat, de la Chambre des communes et de l'assemblée législative du Nouveau-Brunswick.»

5. (1) Le paragraphe 50(2) de la même loi, édicté par l'article 13 de la Modification constitutionnelle de 1987, est modifié par insertion, après l'alinéa a), de ce qui suit :

«a.1) les questions intéressant les minorités francophones et anglophones;»

(2) L'article 50 de la même loi, édicté par l'article 13 de la Modification constitutionnelle de 1987, est modifié par adjonction de ce qui suit :

Participation des territoires

«(3) Le premier ministre du Canada invite des représentants élus des gouvernements du territoire du Yukon et des Territoires du Nord-Ouest à participer aux travaux relatifs à toute question placée à l'ordre du jour des conférences visées au paragraphe (1) et qui, selon lui, intéresse directement le territoire du Yukon et les Territoires du Nord-Ouest.»

6. La même loi est modifiée par insertion, après l'article 50, édicté par l'article 13 de la Modification constitutionnelle de 1987, de ce qui suit :

Conférence constitutionnelle

«51. (1) Le premier ministre du Canada convoque une conférence constitutionnelle réunissant les premiers ministres provinciaux et lui-même dans l'année qui suit l'entrée en vigueur de la présente partie, et, par la suite, au moins tous les trois ans suivant cette conférence.

Participation des peuples autochtones

(2) Sont placées à l'ordre du jour de la conférence visée au paragraphe (1) les questions intéressant les peuples autochtones du Canada. Le premier ministre du Canada invite leurs représentants à participer aux travaux relatifs à ces questions.

Participation des territoires

(3) Le premier ministre du Canada invite des représentants élus des gouvernements du territoire du Yukon et des Territoires du Nord-Ouest à participer aux travaux relatifs à toute question placée à l'ordre du jour des conférences visées au paragraphe (1) et qui, selon lui, intéresse directement le territoire du Yukon et les Territoires du Nord-Ouest.

Non-dérogation

(4) Le présent article n'a pas pour effet de déroger à l'article 35.»

Modification constitutionnelle de 1987

7. L'article 16 de la Modification constitutionnelle de 1987 est modifié par insertion, après «27», de «ou 28».

PARTIE II

Loi constitutionnelle de 1867

8. Le passage de l'article 22 de la Loi constitutionnelle de 1867 qui suit le point 4 et précède le dernier paragraphe est abrogé et remplacé par ce qui suit :

«les quatre divisions doivent (subordonnément aux révisions de la présente loi) être représentées dans le Sénat, ainsi qu'il suit : — Ontario par dix-huit sénateurs; Québec par vingt-quatre sénateurs; les Provinces maritimes et l'Île-du-Prince-Édouard par vingt sénateurs, dont huit représentent la Nouvelle-Écosse, huit le Nouveau-Brunswick et quatre l'Île-du-Prince-Édouard; les provinces de l'Ouest par trente-deux sénateurs, dont huit représentent le Manitoba, huit la Colombie-Britannique, huit la Saskatchewan et huit l'Alberta; la province de Terre-Neuve aura droit d'être représentée au Sénat par huit sénateurs; le territoire du Yukon et les Territoires du Nord-Ouest ont le droit d'être représentés au Sénat par un sénateur chacun.»

9. L'article 27 de la même loi est abrogé et remplacé par ce qui suit :

Réduction du Sénat au nombre régulier

«27. Dans le cas où le nombre des sénateurs serait ainsi en aucun temps augmenté, le gouverneur général ne mandera aucune personne au Sénat, sauf sur pareil ordre de la Reine donné à la suite de la même recommandation, tant que la représentation de chacune des quatre divisions du Canada ne sera pas revenue au nombre fixe visé à l'article 22.»

Disposition transitoire

10. Par dérogation à l'article 22 de la Loi constitutionnelle de 1867, peut être maintenue la représentation au Sénat de toute province dont le nombre de sénateurs excède, à l'entrée en vigueur de la présente partie, celui prévu à cet article; toutefois, il ne peut être nommé de sénateurs pour représenter cette province tant que le nombre de ceux-ci n'est pas inférieur à celui prévu à l'article 22 de cette loi et, par la suite, sous réserve de l'article 26 de cette loi, le nombre de

sénateurs pour cette province ne peut excéder cette limite.

11. (1) La présente partie n'entre pas en vigueur si une modification portant sur le Sénat, conforme aux paramètres énoncés dans l'Entente constitutionnelle de 1990 signée à Ottawa le 9 juin 1990, est faite avant le 1er juillet 1995.

(2) À défaut d'une modification visée au paragraphe (1), la présente partie entre en vigueur le 1er juillet 1995.

Titre

Titre

12. Titre de la présente modification : Modification constitutionnelle de [année de la proclamation].

Motion de résolution autorisant la modification
de la Constitution du Canada

(le Sénat) (la Chambre des communes) (l'assemblée législative) a résolu d'autoriser la modification de la Constitution du Canada par proclamation de Son Excellence le gouverneur général sous le grand sceau du Canada, en conformité avec l'annexe ci-jointe.

ANNEXE

MODIFICATION CONSTITUTIONNELLE

Loi constitutionnelle de 1867

1. La Loi constitutionnelle de 1867 est modifiée par insertion, après l'article 133, de ce qui suit :

Interprétation

«133.1 (1) Toute interprétation de la Constitution du Canada à l'égard du Nouveau-Brunswick doit concorder avec la reconnaissance de ce que, au Nouveau-Brunswick, les communautés francophone et anglophone ont un statut et des droits et privilèges égaux.

Rôle de la Législature et du gouvernement du Nouveau-Brunswick

(2) La Législature et le gouvernement du Nouveau-Brunswick ont le rôle de protéger et de promouvoir l'égalité des deux communautés linguistiques visées au paragraphe (1) en ce qui touche à leur statut et à leurs droits et privilèges.

Maintien des droits des législatures et gouvernements

(3) Le présent article n'a pas pour effet de déroger aux pouvoirs, droits ou privilèges du Parlement ou du gouvernement du Canada, ou de la Législature ou du gouvernement du Nouveau-Brunswick, y compris à leurs pouvoirs, droits ou privilèges en matière de langue.»

Titre

2. Titre de la présente modification : Modification constitutionnelle de (année de la proclamation) (Nouveau-Brunswick).

APPENDIX E

SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

Meeting Schedule/Important Dates

March 22	Establishment of Special Committee of the Legislative Assembly
March 27	Charest Committee is Established
April 3	Organizational Meeting of the Special Committee
April 10	Strategy and Planning Meeting of the Special Committee
April 11	First Report of Special Committee to the Assembly
April 17	Meeting to Review Special Committee's Presentation to Charest Committee
April 18	Special Committee's Presentation to the Charest Committee
May 2	Meeting to Review the Special Committee's Technical Brief for Submission to Charest Committee
May 17	Charest Committee Table Report in Parliament
May 17	Special Committee Meeting to Review the Charest Report
May 18	Special Committee Issue Press Release Responding the Charest Report
May 22	Special Committee Planning Meeting on Imminent First Ministers Conference
May 28	Special Committee Planning Meeting on Imminent First Ministers Conference
June 1	Special Committee Planning Meeting for Strategy in Ottawa
June 2	First Ministers' Conference in Ottawa Begins - Members of the Special Committee meet in Ottawa to further Develop Strategy
June 10	First Ministers Sign Agreement to Lead to Ratification of the Meech Lake Accord
June 15	New Brunswick ratifies the Meech Lake Accord
June 22	Manitoba and Newfoundland do not bring Meech Lake Accord to a vote in their Legislatures
June 23	The Meech Lake Accord expires.